

A regular meeting of the Town of Victor Zoning Board of Appeals was held on July 20, 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: Jeff Perine, 1687 Strong Road; Laura Baranes, Premier Signs; Alan Benedict, Code Enforcement Officer; Martin Avila, Code Enforcement Officer; Ed Kahovec, Town Board; Kim Reese, ZBA secretary

PAST MINUTES:

On motion of Matt Nearpass, seconded by Sarah Mitchell:

RESOLVED, that the minutes of the meeting held on July 6, 2020 BE APPROVED.

Adopted: Ayes 5, Nays 0

PUBLIC HEARING:

PERINE GARAGE ADDITION – 09-Z-2020

Margo and Jeff Perine, 1687 Strong Road

Applicant is requesting to construct garage addition which is less than the required 15 ft to the property line, whereas §211-20C states accessory uses must observe a 15 ft property line setback. The property is zoned Residential 2 and owned by the applicant.

Chairman Reinhardt – Next on board we have the Perine garage. Marty, do we have any public comment on this?

Mr. Avila – There have been no comments on either of the agenda items.

Chairman Reinhardt – Jeff, do you have anything that you want to add that you had from before? Any changes, any questions?

Mr. Jeff Perine – No, I'm good.

Chairman Reinhardt – Let's just circle around real quick. Matt, any questions, comments on this one?

Mr. Nearpass – No, I'm good. I recall this as being relatively straight forward after the discussions. I'm good.

Chairman Reinhardt – Sarah, any questions, comments, concerns?

Ms. Mitchell – No, I'm good thank you.

Chairman Reinhardt – Donna, questions, concerns, comments? Not hearing anything, so I'm going to say you're good. Fred, any questions, comments, concerns?

Mr. Salsburg – This is so big and back so far and the neighborhood is a long ways away, I don't see any problem. We covered it last time.

Chairman Reinhardt – The notes I had and Jeff, correct me if I'm wrong, you were looking for three feet, because of the eave overhang is that right in the garage design?

Mr. Perine – Correct.

Chairman Reinhardt – And it's a five acre lot and you are at least 325 feet from the road. Correct?

Mr. Perine – That's correct.

Chairman Reinhardt – You're looking at tree preservation. There's no opposition from the neighbors, so I'm going to find the resolution.

Mr. Salsburg – Mike, Donna's back now. When you ask her for any comments, I think she was gone.

Ms. Morley – No, I was muted. No, I'm all good, thank you.

Chairman Reinhardt – Ok, so let's go through the criteria quick. I think it's pretty straightforward. I don't think there's going to be any kind of undesirable change in the neighborhood. Justification being is that it is 325 feet from the road and considering that it's a five acre lot. There's no opposition. Do not believe there to be any undesirable change. Anyone want to add anything else to that?

The requested isn't significant due to the same criteria for it being 325 feet off the road. No opposition from the neighbors. Also, add in there that they are also working on tree preservation and there isn't any environmental concerns or changes. And while this is self-created, it's not going to necessarily impact the decision of the board. Anyone want to add anything else as far as conditions or additions to the criteria?

(No) I think we agree it's pretty straight forward. So with that, entertain a motion to approve this variance.

Ms. Morley – I'll make a motion to approve for the 1687 Strong Road garage.

Mr. Nearpass – I'll second.

Chairman Reinhardt – All in favor? (Aye) Opposed? (None.) Alright, carried. Good luck Jeff.

Mr. Perine – Appreciate it. Thank you.

Chairman Reinhardt – You're very welcome. Thanks for your patience.

Mr. Perine – No worries. Goodbye.

PREMIER SIGNS FOR KWIK FILL – 10-Z-2020

7188 State Route 96

Applicant is requesting to install vinyl graphics on gas canopy at Kwik Fill, 7188 State Route 96. Applicant requesting modification to previous variance granted for the front setback that included a condition that no signage was allowed on the canopy except for those required by law. Applicant also requesting variance for three elevations with signage per §165-5B(4). The property is zoned Commercial-Lt Industrial and owned by United Refining Holdings, Inc.

Chairman Reinhardt – Next is the Premier Sign, the Kwik Fill sign. Laura, you're going to be presenting that?

Well it's either going to be Marty or Suzy, did we get anything back from or maybe it's Al, from the county planning board on this?

Mr. Benedict – Yes, you did. The standard denial.

Chairman Reinhardt – Okay with the standard denial from the county planning board, what we're going to need is a super majority, so let's have some further discussion on this. Matt, what are your thoughts here on not only what our fact finding was before, but also the county planning board?

Mr. Nearpass – to your point it's a bit of a cookie cutter from the county planning board what we're used to seeing or traditionally see for this district. From what I recall from last time I'm in favor of granting the, not the full signage, I forgot what the two options were.

Chairman Reinhardt – It was the band on top of the

Mr. Nearpass – Yes, it was the band without the signage, basically because it was my opinion that the applicant had a couple times over history has traded off additional signage for the set back with the road and so I don't feel like we should nullify the negotiations and where the previous zoning board in town had settled with the previous variances. So, they made the tradeoff allowed them to have the setback in lieu of not having additional signage. Now they are coming back in front of us wanting the additional signage, but obviously they need those setbacks still. So, I am okay with the band and the colors and all that, I'm just not okay with the additional signage. I think the applicant seemed lukewarm to the idea. Laura, I believe you had commented that there were other examples, right? Everyone is a little different and some towns are okay with it and other town say no, so Kwik fill seemed like it was going to be a good neighbor in that regard.

Chairman Reinhardt – Fred, thoughts, comments on this one?

Mr. Salsburg – Al, speaking to you, I understand about the prior variances, but you spoke about it being rebuilt and under different sign ordinances. Do you know if the last activity which was in the early 2000s if I remember right and they rebuilt it. Did that allow a sign at that time? Supersede the past variance?

Mr. Benedict – There's nothing where that's been superseded the variance. I checked back and I didn't find any record of them going to the planning board or anything like that or the zoning board in 2001. They came in for a building permit to put up a new canopy with new designs and was approved as such through the building department.

Mr. Salsburg – Okay. I see the new sign on the new station just down the street. It looks pretty good. But, I guess we have to go along with the old original agreement. That's it for me.

Chairman Reinhardt – Okay, we can circle back if you'd like. Sarah, your comments on this?

Ms. Mitchell – I don't really know who to ask this question of, but the current canopy does say Kwik Fill on it, so I guess I'm confused because it was saying that the approval to have it so close to the road was under the understanding that canopy wouldn't have advertising on it, but it does have advertising. So, I'm questioning how that happened, if that technically was not approved by the zoning board or what was approved by the zoning board.

Mr. Benedict – I don't believe any of those signs on the canopy were approved by the zoning board or the planning board. I think someone after the canopy was build; I'm not sure when I think signs showed up on it, probably unapproved and then when it was rebuilt in 2001 it looked like there were signs on the previous one, so they just followed through putting signs on the new one and I think it just slipped through. Nobody noticed that there was a variance that said no signs.

Mr. Salsburg – So, it's probably had a sign for 20-25 years.

Mr. Benedict – Pretty close.

Ms. Mitchell – That was really just my only comment, I guess. At this point, my thoughts are we should be correcting the error that happened. And if the agreement with the zoning board was to put up this canopy or the setback, the agreement was that there would be no advertising on the canopy, then I guess I would follow that direction right now as well. Because that was the original agreement with the zoning board. That's it. That's my only comment.

Chairman Reinhardt – Okay. Donna, thoughts, comments?

Ms. Morley – I'm in agreeance with Matt's comments.

Chairman Reinhardt – Okay. I, as well. I think we're all on the same page with it. That this is tied into a prior variance. The band I think, the colors, I don't think the board is overly alarmed by it, but the conditions of the prior variance had to do with the side setbacks. I think we understand that it's a bit of a difficult lot size and all, but that was already addressed. It was taken care of. So granting this variance I think would certainly undo what the prior variance was for and agreeably and probably most significantly it would alter and change the character of the neighborhood.

Mr. Benedict – Mike, I think Laura had some comments earlier, but she's muted.

Chairman Reinhardt – We're going to circle back to Laura and give her a chance to speak.

Mr. Nearpass – While Laura's doing that, Al, I've got a question for you. So the sign was kind of two parts. There was the Kwik Fill part and I believe there was one where it was really just a picture of America with the flag superimposed. Without the Kwik Fill part and it's just the America with the flag superimposed over a piece, we wouldn't consider that signage, would you? They would be allowed that or wouldn't they?

Mr. Benedict – My opinion is that it's not business signage. It's still a sign, but I'd say to me it's not a business sign.

Mr. Nearpass – It'd be like the band that's going across.

Mr. Salsburg – I think that's true.

Chairman Reinhardt – Okay, so Laura your response to the board's concern as well as the county planning board's denial. Do you want to comment from our concerns?

Ms. Baranes – I understand. I just started doing their signs five years ago, so what's been up or whatever up is, I know there's a lot of sign companies that just think they can put up whatever they

want, when they want without getting permission. We don't do that. But, I would be at least hoping if we can't have any of the signs on there we can at least just clean that up and do the green and white background on it, just to make it look better than it does. And, that would be covering up the Kwik Fill that's on there right now, too.

Chairman Reinhardt – Great, so I think the board is in agreement at the colors on the canopy, the band that's on the canopy doesn't qualify or is defined as a sign. So putting those colors up there certainly is not objectionable or even under the review of the zoning board. And I think to Matt's comment and in question to Al, a picture of the flag is kind of fits in the same as the colors that are on the canopy so it's not a sign as defined in the code.

Mr. Nearpass – The only real signage part I believe is just the Kwik Fill, the words Kwik Fill is really what we're talking about here. Not being on the canopy.

Chairman Reinhardt – Anything else want to add? Questions?

Ms. Baranes – I don't.

Chairman Reinhardt – I think we're ready to go then. We're going to walk through the criteria.

First would be 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.

And, the justification being that the county planning board did deny this on their review. As, Matt pointed out there was a prior variance and it was tied into the request for the side setback and the condition that it wouldn't be a sign on the canopy. Anyone want to add anything else to the first criteria?

Alright, second being the benefit sought by the applicant *can* be achieved by some method, feasible for the applicant to pursue, other than an area variance. Again back to the prior variance they already have signage, looking for more that is not permitted by the code as well as the prior variance and the side setback request. Anything else on the second criteria?

Third criteria being the requested area variance *is* substantial. Again county planning board denied the request and the prior variance with the signage and tied into the side setback, consider it being substantial. Any other additions 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. I don't think signs really can qualify as putting an adverse impact on the physical or environmental conditions in the neighborhood.

Everyone good with that?

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.

Alright, that's the justifications. Anyone want to add anything else to our resolution? Hearing nothing, could we get a motion for a denial?

Matt motioned. A second? Fred seconded it.

All in favor of the denial, say aye. (Aye) Opposed? Okay. Any questions, Laura?

Ms. Baranes – I'm just wondering if you just through conversation you just said that the banding would be able to go with the green and the white and the Driving America would stay and that would be it, right?

Chairman Reinhardt – The colors, I think the problem that was presented before the board was the letters that spell Kwik Fill, so that qualifies as a sign. The other band that's on the canopy is not considered a sign.

Ms. Baranes – The Driving America?

Mr. Nearpass – So, Laura if I recall Driving America, you had the what I referring to earlier was the map of America and it had kind of the flag superimposed as the background. And, it said Driving America underneath it and Al, I forgot to mention the language underneath it. I don't think that constitutes as a sign, correct? I think that you'd be okay, but I want Al to. So you're okay with Driving America? It's literally the Kwik Fill that you're saying cannot be put up there.

Mr. Benedict – I'd agree with that.

Ms. Baranes – So it would just the green and white banding, no Kwik Fill logos at all on it and just the Driving America over to the right from side, like it shows?

Chairman Reinhardt – Right and the United States flag that it's inside the United States. That figure, it's not necessarily a logo, but it's not words it's not advertising anything. Right, as I'm looking at the picture, it's Driving and there's the continental United States with the flag on it and then after to the right of that it says Driving America. And, Al's comments and our analysis is that's not under the eyes of the code a sign, so you can have the colors are permissible, the words Driving America and the continental United States with the flag in it is okay. Right, the board is all in agreement with that?

Yes.

Chairman Reinhardt – Any other questions, Laura?

Ms. Baranes – No, just no logos and we're good.

Chairman Reinhardt – Correct. Okay?

Ms. Baranes – Okay.

Chairman Reinhardt – Thanks for your patience.

Ms. Baranes – Thank you. I appreciate it.

Chairman Reinhardt – You're welcome. Moving along then, does anyone else have anything to present before the board?

Mr. Salsburg – I have a question, if a motion is written to deny and the vote fails, is it approved?

Chairman Reinhardt – No, then you really should be doing it the other way then. And it needs to be in an affirmative direction.

Mr. Nearpass – Does it fall into a no action taken or no?

Chairman Reinhardt – I think procedurally just to make it clear, we can do it the other way. And see if we can get a positive vote on it and if it doesn't work then I agree with you, no action and it really turns out to be a denial.

Mr. Salsburg – That's simpler. I was just kind of curious.

Chairman Reinhardt – I try and draft them or present them with a feel of how the board is going to go, so it doesn't create that problem. But once in a while it does.

Mr. Kahovec – The only thing is we are going into the budget process, that's it. From the town board's perspective. For 2021. If there is anything that the board needs make sure you feed that through, so let us know.

Mr. Nearpass – You think we're back physically in two weeks.

Mr. Kahovec – We're all hoping so, but not officially yet. Waiting for the official word.

Chairman Reinhardt – When do you think? Do we have any idea when we are going to know that?

Mr. Kahovec – No but as soon as I know you'll know.

Chairman Reinhardt – Sounds like a plan. Anything else before the board? Motion to adjourn?

Ms. Morley – I'll make that motion.

Mr. Salsburg – Second.

Chairman Reinhardt – All in favor? Thank you. Have a good night.

It was unanimously agreed and RESOLVED that the meeting was adjourned at 7:27 PM.