

A regular meeting of the Town of Victor Zoning Board of Appeals was held on August 17, 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: David Cox, Passero Associates; Matt Indiano, Victor Jeep; Arthur Kuyan, Stonefield Engineering; Matthew Dana, 91 Victor Heights Parkway; Jeffrey Bateman-Ferry, 7755 Victor Mendon Road; Brett Caldwell, 7689 County Road 41; Andrey Tovstukha, 1135 Willis Hill Road; Linc Swedrock, BME Associates; Al Benedict, Code Enforcement Officer; Ed Kahovec, Town Board; Suzy Mandrino, Town of Victor; Kim Reese, ZBA secretary

PLEDGE OF ALLEGIANCE

PAST MINUTES:

The August 3 minutes will be voted on at the September 8 meeting.

PUBLIC HEARING:

Chairman Reinhardt – First on the agenda is Victor East Auto. Who is going to be presenting?

Mr. David Cox, Passero Associates

Chairman Reinhardt – Hello David. I'm going to just take a guess that you know the drill, but just in case we're just going to review quickly. Zoning board takes a look at five criteria; whether or not there'd be an undesirable change produced in the character of the neighborhood; whether or not the applicant can achieve it by some method, whether or not the variance is substantial, whether or not it will have an adverse impact on the physical or environmental conditions, whether or not its self-created.

You have three requests for variances on board. It's a bit complicated, but I think we should be able to get through this. So, what we'd like to do here is circle back a little bit and review where we were before we had this I think on July 6 we were waiting for some comments. I think we do have them from both FEMA and the county planning board.

Mr. Cox – Correct.

Chairman Reinhardt – Thank you. So before we start getting into both the FEMA comments and the county planning board, do you have anything else that you want to touch on, add, things that we need to know about?

Mr. Cox – Just some of the homework that you gave me from the last meeting was to go out and measure Mr. Tire, Auction Direct and VanBortel to see how far their parking was from the pavement of Route 96. So we went out and we did that and so Auction Direct was 95 feet from the Route 96 pavement edge to the parking; Mr. Tire was 105 feet from the Route 96 pavement edge to the edge of the parking and Van Bortel was 40 feet from Route 96 pavement edge to the parking. So previously we were proposing 60 feet, but after going out and measuring those we revised ours to match Auction Direct which is 95 feet, so we had pushed our parking 35 feet further back from the New York State Route right of way.

Chairman Reinhardt – And, I think Matt brought this up before what we were looking at is to try and get some cohesive line that makes it both aesthetically pleasing and have some kind of consistency for that stretch of road.

Mr. Cox – Correct.

Chairman Reinhardt – So, anything else you want to add or tell us about before we ask some questions?

Mr. Cox – We went before the Ontario County Planning Board last week and they unanimously recommended approval. All 15 and their comments are listed there. I think they were brought up earlier.

Chairman Reinhardt – I see that, but it appears that there's a number of questions that they are putting into our lap and it's beyond the parking. Generally speaking it looks like they are also concerned about the FEMA issue, the flood issue, so want me to run through them or do you want to touch on them?

Mr. Cox – No, I can touch on them. So, they obviously had 2018 comments which was before we had gotten our FEMA approval, so their main thing in 2018 was there's the potential of flooding. You need to dig into this and that's when the town said you need to go to FEMA and see if they will give you approval. And, that's what we spent two years doing was getting FEMA approval, which we now have. So then their 2020 comments the August 2020 comments were before the meeting. So they wanted to know the area of disturbance, which I gave to them. They wanted to know the driveway, how does the driveway meet, cross access management, spacing requirements, so I went over that. Because the site has two creeks; it has Mud Creek and Fish Creek on either side we wouldn't do any shared access because that would just create more disturbance, put more things in the creeks to create additional floodings so it doesn't make sense to have cross access management. And, then the other suggestion they had was to just line up our driveway with one of the other driveways across the street, which we can do. So, that was a good comment from them. We'll go out there and we'll confirm site distances to see which driveway it makes more sense to line up with, but we can absolutely do that. And then the next thing was protecting the water quality of Mud Creek and that's where I explained to them that the entire parking lot has curb all the way around it and will be completely enclosed so that all the runoff that lands in the parking lot will be collected by storm water, sewers and catch basins and will be discharged to our storm water pond and our (inaudible) structure which will clean the water before it finally discharges it to Fish Creek, so we don't have to worry about water running

off pavement directly into the creek. It's going to be treated first. And, then the fourth one was we went over the .6 rise in base flood elevations, so that if only one point along the entire creek that there's a .6 rise. Most of the other cross sections, I think we have 30 cross sections, only one of them had .6. The majority of them were around 0 or .1 or even a little less than .1, so an actually decrease so it kind of fluctuated. The .6 at that cross section then would not have any detriment on the outflow of the sewer treatment plant. The Farmington sewer treatment plant is about 14 feet higher than the creek, so it's got lots of elevation. There's no concern there, so during the meeting, I ran through all those and then the comments right below that is CPB comments and clarifications by applicant representative. So these are the comments they made after the meeting and it says have the applicant minimize potential visual noise impacts adjacent to residential use through buffering, lighting design and operation. So a lot of their comments that they were giving they realized were more site plan related and not really related to the variance, but they still wanted to get them out there just so we have record of it so when we go through the site plan approval process we're making sure to hit all those items so and I explained to them that we put the entrance to the service area on the west side of the building opposite from the residential area. I explained that we have 250 feet of the stream and wooded area and there's dense landscaping, so there's quite a large buffer there as far as landscaping. I also said the lighting design will be shown towards the project. There will be house shields on the back of the lights that will block light from going toward the residential property so it will really be directed toward the building. Number two was potential floodplain impacts and that's where I explained to them that we went through FEMA and got approval from them to do this project and then number three the site design places service area doors as far as possible from the residential district and uses full cut off light fixtures to minimize impact of use on adjacent residential uses. Number four was the proposed impervious service is 4.5 acres or 40 percent. So we have 60 percent green space on the project and if you look at a car dealership that is a very very high green space. Most car dealerships are 80, 90 percent impervious. You are talking 10 percent green space or 15 percent green space. We are providing 60 percent green space which is very very high for a car dealership. And, all paved areas are curbed and all storm water will be treated before discharged to Fish Creek and then number five is the Farmington Sewer Treatment plant located north of the site of Mud Creek is reportedly an elevation 14 feet above the project site. So, that wraps up their comments.

Chairman Reinhardt – So fair to say then and thank you for doing all that; it's fair to say that you've addressed all of the county planning board's comments and you are willing to comply with the conditions if this board should choose to approve the variance?

Mr. Cox – Yes.

Chairman Reinhardt – Okay. Great. Anything else you want to add or comment on before I ask the board for questions?

Mr. Cox – No, I think I'm good.

Chairman Reinhardt – Great. Thank you.

Matt, would you like to start with your questions?

Mr. Nearpass – I think I'm all set. I appreciate the applicant taking the measurements that they did. The main take away from last time again was just try to line up those parking lot areas with their neighbor there and any of the questions and comments, I think they did a great job answering them from the county, so no further questions from my side.

Chairman Reinhardt – Donna, any questions?

Ms. Morley – I don't have any. Thanks for doing your homework, David.

Mr. Cox – Thank you, Donna.

Chairman Reinhardt – Sarah, any questions?

Ms. Mitchell – No, I don't have any further questions.

Chairman Reinhardt – Great. Thank you. Fred, any questions?

Mr. Salsburg – Well David, you spoke about lighting. (Technical difficulties)

Chairman Reinhardt – Was it me, or was Fred cutting out on that?

(Agreement)

Mr. Cox – I think you were talking about the lighting plan. We haven't done full design plans yet. That's the next step. If we get these variances we can move on to the site plan approval process. So, we don't have that fully flushed out, but what I do know is that the lighting along the parking edges will be shining towards the building and they'll be a house shield on the back to prevent any glare from going outside the project area.

Mr. Salsburg – I haven't noticed the sign out by the road, is there one or is it just on the building?

Chairman Reinhardt – What does signage have to do with any of the three variances they are asking for?

Mr. Salsburg – Nothing I guess. I guess I can pass on that.

Chairman Reinhardt – Thank you. If there is a signage variance, we can certainly come back to that someday, but I don't think we are looking at signage. Any other question you have, Fred?

Mr. Salsburg – I'm good.

Chairman Reinhardt – David, I want to just touch a little bit on the parking. Originally the variance request for parking for 40 feet from the right of way. But, doing your homework now you're willing to match it to 95 feet from the right of way?

Mr. Cox – No, 95 feet is from the pavement of route 96.

Chairman Reinhardt – So what is it you're asking for then, for the variance regarding parking from the right of way? How much space?

Mr. Cox – 41.5 feet.

Chairman Reinhardt – From the right of way?

Mr. Cox – Right.

Chairman Reinhardt – So that's a little bit more, 41.5. I believe we can move forward unless Al do you have anything concerns, comments, you think we have to know before we move forward?

Mr. Benedict – I just had a comment about the set back and depending on how you want to word it, it is 41.5 feet at its closest point, but it also goes to, at least according to the plan I'm looking at, 63.2 feet from the right of way. I don't know if you want to reflect that, unless David's intentions have changed and he wants to go totally at 41 feet or if he still plans on sticking with the plan that I was looking at. If the resolution is approved that it should reflect that, as well.

Chairman Reinhardt – What's your thoughts on Al's comments?

Mr. Cox – Our plan was to have it how we show it on our plan. So, like Al was saying there's one point that's 41.5. It is a little bit further away in some of the other areas.

Chairman Reinhardt – Which plan are you looking at?

Mr. Cox – The site plan that was submitted with our July 14 letter to the ZBA.

Chairman Reinhardt – What I'd like to do then is reference that specific site plan.

Mr. Salsburg – There's a site plan dated 7/14/2020.

Chairman Reinhardt – So that's the site plan we're going to reference for the variance to allow the parking. Is that okay with you, David?

Mr. Cox – Yes, sounds great.

Chairman Reinhardt – Everyone else good with that, so we at least have something to reference when we review the variance? Okay. So let's run through the criteria, unless there's some other comments and if there are, please stop me.

So, looking at the first consideration here is whether or not 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. And we're looking at all three variances here. And, I would propose that since the FEMA approval plans have been met for the minimum plain management

as well as the county planning board's comments of August 12, 2020 and the applicant addressing those comments and willing to comply with the county planning board comments as a condition for approval. Would anyone else like to add anything else to the first criteria?

Hearing none, second, the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. I don't think there's any question that this is a unique piece of property and it's taken a good deal of homework and effort both for to get the FEMA approval and county planning board comments, so incorporating what was said for the first criteria into the second criteria. Would anyone else like to add anything to the second criteria?

Third, the area variance, I have to say, is substantial however as we've indicated before that with the FEMA approval and the county planning board comments and the applicant willing to comply with the county comments it seems to mitigate those issues. Would anyone like to add anything else to the third criteria?

Hearing none, the fourth, the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Again with the FEMA approval and the county planning board and especially with addressing the water quality that there will be no run off, minimal runoff, it's going to be curbed and closed with the water going into storm sewers and ponds. Would anyone like to add anything for the fourth criteria?

Fifth, whether or not the alleged difficulty is self-created. I would suggest that it is, however this issue is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance. Would anyone else like to add anything to the five criteria or for the conditions?

Alright, not hearing anything, I would entertain a motion for approval for all three variances.

Ms. Morley – I'll make that motion for approval of the three variances.

Chairman Reinhardt – Thank you. Do we have a second?

Mr. Nearpass – I'll second.

Chairman Reinhardt – Alright, thank you, Matt. All in favor? (Aye) Opposed? (None) Alright. Motion carried for all three variances for approval. Thank you, David for your effort, cooperation and homework. Good luck to you.

Mr. Cox – Thank you very much.

Mr. Indiano – Thank you very much.

Chairman Reinhardt – You're welcome.

RESOLUTION:

Victor Jeep, 6484 State Route 96, Area Variances

Appl. No. 20-Z-2018

At a regular meeting of the Town of Victor Zoning Board of Appeals held on August 17, 2020 the following resolution was adopted:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on September 10, 2018 and July 14, 2020 from David Cox, Passero Associates, representing Victor Jeep, 6484 State Route 96 requesting to construct a 25,800 sf building for an automobile show room and service area and requesting the following area variances: §211-22A(7)(a)[3][b] via §211-23A requires the facility be 1,000 feet from a residentially zoned district and building is planned within 215 feet. The proposed structure is approximately 300 feet from the nearest residential use structure, whereas §211-22A(7)(a)[3][c] via §211-23A requires motor vehicle repair be at least 500 feet; and to allow parking 41.5 feet from ROW instead of the 80 feet required by §211-32A(2)(d)[1][a].

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on June 28, 2020 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; 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, the Ontario County Planning Board assigned the referral as a Class 1, referral no. 119-2020, and reviewed it on August 12, 2020 making a motion to retain referral 119-2020 as a Class 1 and return it to the local board with comments; and,

WHEREAS, §120-15 Floodways of the Town Code indicates that development shall be prohibited in the floodway unless a technical evaluation demonstrates that the base flood elevation is not affected. A CLOMR was issued by FEMA on May 27, 2020;

WHEREAS, a Public Hearing was held on July 6 and August 17, 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 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 applicant received FEMA approval on May 27, 2020 and County Planning Board comments on August 12, 2020. The applicant addressed those comments and is willing to comply with the County Planning Board comments as a condition for approval.

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: This is a unique piece of property and a good deal of effort was put forth to get the FEMA approval and County Planning Board comments.

3. The requested area variance is substantial.

Justification: With the FEMA approval and the County Planning Board comments and the applicant willing to comply with the County comments mitigates the issues that make this request substantial.

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

Justification: There is no adverse effect due to FEMA approval and the County Planning Board comments. Especially with addressing the water quality, stating there will be minimal runoff and that it will be curbed and closed with the water going into storm sewers and ponds.

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 Ms. Morley and seconded by Mr. Nearpass:

DECISION:

NOW, THEREFORE BE IT RESOLVED an application and site plan drawing C 101 was received from David Cox, Passero Associates, representing Victor Jeep, 6484 State Route 96 requesting to construct a 25,800 sf building for an automobile show room and service area, whereas §211-22A(7)(a)[3][b] via §211-23A requires the facility be 1,000 feet from a residentially zoned district and building is planned within 215 feet. And, the proposed structure is approximately 300 feet from the nearest residential use structure whereas §211-22A(7)(a)[3][c] via §211-23A requires motor vehicle repair be at least 500 feet; and to allow parking 41.5 feet from ROW instead of the 80 feet required by §211-32A(2)(d)[1][a], BE APPROVED.

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

1. Per Town of Victor Code §211-8C(5)(a, b) this variance expires if a permit or extension is not granted within one year from the approval of subject variance.

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	Aye



Adopted: 5 Ayes, 0 Nays

Next, is Matthew Dana. The carry-over from August 3. Matthew with us?

Mr. Dana – Yes.

Chairman Reinhardt – Okay, we have some comments from the county planning board. They returned it as a Class 1. And this is for the auto repair facility, you need a variance because it's within a 1,000 feet of a residential district. I don't think we have any public comments. Suzy did we get any public comments from this or Kim?

Ms. Mandrino – There were none on YouTube at this time.

Chairman Reinhardt – And we haven't received anything for this application? Anybody from the public chime in since August 3.

Ms. Reese – No comments.

Chairman Reinhardt – Let's just circle back a little bit. Matthew this is for 30 vehicles and it's just for your fleet vehicles is that right?

Mr. Dana – For the maintenance of those vehicles. Not storage or anything.

Chairman Reinhardt – Right. I thought the county planning board at least tried to isolate it. There's not going to be any kind of painting. This is just general maintenance. Oil, brakes, tires, just for those fleet vehicles, right?

Mr. Dana – Correct.

Chairman Reinhardt – And, you're proposing, it's two bays, at the most you're going to have is two mechanics at any one time? Your hours what you're looking for is Monday through Friday, 7 to 5pm, Saturday, 8 to 2pm. I've got a question mark behind that. Is that all you're going to do is just 2pm? Or were you looking for something more?

Mr. Dana – We currently are not working any later than that. I couldn't see any later than 3:30 being necessary. I thought we touched on that the last time.

Chairman Reinhardt – So, 3:30 on Saturday would be your outside time to work on those vehicles?

Mr. Dana – Yes.

Chairman Reinhardt – Okay. Do you have anything that you want to add or touch on before we just ask the board for other questions?

Mr. Dana – No, I don't.

Chairman Reinhardt – Great. Thanks. Matt, do you have any questions that you want to follow up with?

Mr. Nearpass – No, nothing further. I thought we had a good discussion last time with the applicant. Everything's been very reasonable, making him a good neighbor.

Chairman Reinhardt – Great. Sarah, any other thoughts, questions, comments.

Ms. Mitchell – Nope. I had nothing further either.

Chairman Reinhardt – Great. Thanks. Donna, any questions, concerns, comments?

Ms. Morley – None, thank you.

Chairman Reinhardt – Fred, questions, concerns, comments?

Mr. Salsburg – It's a small operation. There hadn't been any complaints in the past, so I'm fine with this.

Chairman Reinhardt – Let me just circle back a little bit. Matt, I had a note here 30 vehicles and other contractor vehicles. Were we able to pin down what was the maximum number that you think you're going to be dealing with?

Mr. Dana – There's only a few other contractors in the area that we work with probably in total they own about 75-80 vehicles.

Chairman Reinhardt – How many vehicle do you think would be onsite at any one time?

Mr. Dana – Two or three max. There's really not any room for any more than that. So, it's like we said before. It's by appointment only.

Chairman Reinhardt – Okay, great. I think I'm all set on this one. So, let's run through the criteria. Did somebody have a question, comment, concern? No, okay.

Whether or not 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. It is a small operation. It is for leased vehicles. By appointment only. Hours would be restricted to Monday to Friday 7am – 5pm, Saturday 8am – 3:30pm. At the most would be two mechanics on site at any one time. There are only two bays and this is only for general maintenance of those fleet vehicles for example oil changes, brakes and tires.

Would anyone like to add anything for the first criteria?

Second is whether the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Chairman Reinhardt – Dropped off the call for a bit.

Chairman Reinhardt – The third criteria whether the area variance is not substantial. Justification is it's a unique operation. Thirty leased vehicles with some other contractors. By appointment only. Two mechanics at any one time and reasonable hours of operation. Would anyone like to add anything for the third criteria?

Whether or not the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This really has no impact. It has everything to do with the location of the operation and the hours of operation so I don't see this as having any adverse impact on the physical and environmental conditions. Anyone want to add anything else to the fourth criteria?

Okay, fifth, 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. Would anyone else like to add anything specific to the conditions for this variance?

Hearing none. I would entertain a motion for approval.

Mr. Salsburg – I move to approve.

Chairman Reinhardt – Thank you, Fred. A second?

Ms. Mitchell – I'll second. It's Sarah.

Chairman Reinhardt – Thank you, Sarah. All in favor. Aye. Opposed (none). Motion carried.

Alright. Thank you, Matthew. Good luck.

Mr. Dana – Thank you all very much for your time.

Chairman Reinhardt – Thanks. I'm going to take this opportunity to rejoin the meeting. Bear with me a moment. Okay. I'm back on. Thanks for your patience.

RESOLUTION:

91 Victor Heights Parkway, auto repair facility Area Variance      Appl. No. 11-Z-2020

At a regular meeting of the Town of Victor Zoning Board of Appeals held on August 17, 2020 the following resolution was adopted:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on July 17, 2020 from Matthew Dana, 91 Victor Heights Parkway, Victor, NY for the location of auto repair facility whereas §211-24A(9)(b) states motor vehicle repair must be at least 1,000 feet from boundary of a residentially zoned district;

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 July 26, 2020 and whereby all property owners within 1,000 feet of the application were notified by U.S. Mail; 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, the Ontario County Planning Board assigned the referral as a Class 1, referral no. 140-2020, and reviewed it on August 12, 2020 stating it was to return to the local board with comments; and,

WHEREAS, a Public Hearing was held on August 3 and 17, 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 not be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

Justification: It is a small operation for leased vehicles and by appointment only. The hours would be restricted to Monday through Friday, 7am to 5pm and Saturday, 8am to 3:30pm. At most there would be two mechanics on site at any one time. There are only two bays and this is only for general maintenance of those fleet vehicles for example, oil changes, brakes and tires.

2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.

The nearest residential structure is 330 feet from this business. It is a parcel to the southwest that's a previously established residential district. It's currently vacant. The applicant has had no complaints and has been a good neighbor. The way this business is run would not change. All vehicles are stored inside. The hours are reasonable and there's no additional traffic.

3. The requested area variance is not substantial.

Justification: This is a unique operation. It will involve thirty leased vehicles with a few other contractors and by appointment only. There will be only two mechanics at any one time and reasonable hours of operation.

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 project really has no adverse impact on the physical and environmental conditions. It has everything to do with the location and hours of operation.

5. 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.

On a motion made by Mr. Salsburg and seconded by Ms. Mitchell:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application of Matthew Dana, 91 Victor Heights Parkway, Victor, NY for the location of an auto repair facility whereas §211-24A(9)(b) states motor vehicle repair must be at least 1,000 feet from boundary of a residentially zoned district; BE APPROVED.

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

1. Per Town of Victor Code §211-8C(5)(a, b) this variance expires if a permit or extension is not granted within one year from the approval of subject variance.

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	Aye

Adopted: 5 Ayes, 0 Nays

The next variance application is Jeffrey Bateman. Hello Jeff.

Mr. Bateman-Ferry – Hello.

Chairman Reinhardt – Did you see Jeff Hennick’s there’s a couple of emails that went back and forth, but it looks like you had contact with him.

Mr. Bateman-Ferry – It was actually last night that we spoke.

Chairman Reinhardt – So you had an opportunity to have a chat with him. Is that right? And, how did that go?

Mr. Bateman-Ferry – Very well. It was the first time we spoke, in person I guess. Not quite in person, but. We had a nice conversation. We kind of went over some of his points. His main concerns being the drainage and the composting, really. And, what we came up with was actually in one of his emails was I’m pretty sure I called Waste Management and from the

sounds of it, I can just throw it all away as long as it's bagged. It shouldn't be too much, bedding and animal waste, so it may work out best just to throw it all away.

Chairman Reinhardt – His numbers seem to be pretty why; I think at one point he said the amount of compost would go from 1,300 to 7,000 pounds. I'm not sure where he got.

Mr. Bateman-Ferry – He did a lot of his homework and the numbers may be a bit off. And, you can see kind of the coop it's previous location was, it's a bit different set up was the chickens were able to walk the surrounding woods which I won't get so I'll have more to discard than the previous owner but I don't think it's going to be near his numbers. I think he had mentioned turning tons of this waste and I don't think it's going to be that bad.

Chairman off the call for a bit.

Chairman Reinhardt – So fair to say that any type of waste composted you're responsible for mitigating it and whether it be responsibly composting it and delivering it to waste management for disposal. Is that right?

Mr. Bateman-Ferry – So, let's circle around, Matt do you have any questions?

Mr. Nearpass – I still think we have to have some kind of compromise here. I think it's great that you and your neighbor are talking. It does sound like both of you are working on some kind of agreement. He's got his concern with the well and how the back area floods and those kinds of things. The last time we spoke we were talking about from six to three chickens and then I think Donna kind of convinced me that six chickens isn't a big deal and then I went and did a little homework too and read the emails and I think my biggest concern is the waste. I think some compromise has to be made and a play has to be called here that isn't just we'll just let you and your neighbor to continue to just work it out and give you the okay. I'm okay with the six chickens, but I think you really have to have the waste taken care of offsite. Whether it's doing something with waste management. I've read the same things. I've read chickens don't make good pets. I know you want them to be pets, but that's your prerogative and they can produce 1-2 pounds of waste day per chicken and you do the math and that's 50-80 pounds a week that you're going to be turning over to waste management in a bag. So there's some work for you there, but I think that's the better of two. Unfortunately you've got the size of the lot, you've got the issues with the water going on back there. There's a well on the other side of your neighbor's property. I think it's up to us as a board to try to make a play call here that communicates very directly what you can and can't do and I think what works in the best interest of both parties. I don't think I should be telling you you can't have the chickens, but I think based on the code and your lot size and the situation that it's in after we've kind of done our fact finding that I'd feel much more comfortable if the waste was just taken care of offsite and it sounds like your neighbor would, too.

Mr. Bateman-Ferry – I agree. I'd like that best either way. Then there's no smell. There's no worry.

Mr. Nearpass – Exactly. So, I would be okay with the six chickens knowing that the waste is taken care of offsite by Waste management. It's not going to be composted. It's not going to be put somewhere else that's it's going to be taken care of by some third party and I think everyone would be happy with something like that. I'll turn it over to the rest of the board too maybe that could just be a discussion point if people want to chime in on it, I'm only one vote here. But that's where I'm sitting right now.

Chairman Reinhardt – Okay. Thanks, Matt. Donna, questions, comments?

Ms. Morley – No, don't have any.

Chairman Reinhardt – Sarah, questions, comments?

Ms. Mitchell – I think that I'm kind of opposite from Matt. I still have concerns about sound. And, smell and even though he is 100 feet potentially from one neighbor, he is very close to another neighbor. I think code restriction of the 100 feet is there for a reason, so I'm not sure you're going to sway me to the yes side of this because of the concerns with sound and smell. And, I know that it's a very busy road during the day, but at night the road isn't as busy, so the sound of the road will be gone and potentially you'll be able to hear the chickens. So, those are just my thoughts, my comments. And, that's all I have.

Chairman Reinhardt – Thanks Sarah. Fred, questions, comments?

Mr. Salsburg – There's a lot of vegetation back there and I sort of feel that having six chickens the perception is being overplayed here. I don't see a problem with it.

Chairman Reinhardt – Fred, what are your thoughts then on the proposed condition of a maximum of six chickens?

Mr. Salsburg – I think that's great. That's good. That's not very many.

Chairman Reinhardt – And, the waste not to be composted, but to be taken off-site.

Mr. Salsburg – All the better.

Chairman Reinhardt – The other concern I thought Jeff Hennick has was the questioning the time limit on the variance. I think it's either an all or nothing thing. To try and put a sunset provision in there it's going to get dicey. It runs with the land, so I think that usually puts before the board, variances are important and it should be taken seriously. So, I'm not in favor of putting any kind of provision on this, but the rest of it, I think the maximum of six chickens and the waste to be

taken care of off-site seems reasonable. The area where the applicant is currently living and the amount of space he has I think is relevant but would anyone else like to add a comment?

Mr. Salsburg – Last time we said no roosters.

Chairman Reinhardt – Good point, no roosters.

Mr. Salsburg – The fact is though that you get little ones, you get one. You have to agree to dispose of that rooster if one pops up in the breed.

Chairman Reinhardt – Anything else?

Mr. Salsburg – Not from me.

Chairman Reinhardt – Okay, Jeff anything else you want to add? Thoughts, concerns?

Mr. Bateman-Ferry – Well I guess I did have some questions about fencing and I think I had mentioned this at the last meeting, so I think the grazing area will have to be slightly larger. I think I spoke with Fred about this when he paid a visit. I'll have to build a slightly larger grazing area. I don't know if there's limits to that or if

Chairman Reinhardt – Well it depends on how tall the fence is?

Mr. Bateman-Ferry – I guess I could comply with whatever need be. How tall can I make it?

Chairman Reinhardt – Al, can you comment on that on fencing restrictions?

Mr. Benedict – Generally, it's six feet.

Mr. Bateman-Ferry – I mean this is chicken wire it's not quite a fence.

Mr. Benedict – I know there's some exemptions of this sort of thing we can probably figure out where to put it. Perhaps it's best if I contact you tomorrow and we talk about it.

Mr. Bateman-Ferry – Me? Yes, absolutely, please.

Mr. Benedict – If the board's okay with it.

Mr. Nearpass – Al, is there a restriction on the grazing area? Or are we really talking the distance from the coop? We're really talking about a variance which is measured from the coop not the grazing area or is there something I'm missing? You can fence in a grazing area. Are you measuring from the grazing area to the lot line or are you measuring from the coop to the lot line?



Mr. Benedict – I'd have to figure out how that fits into the code. Give me a moment let me see if I can find it while you guys dealing with the other stuff.

Chairman Reinhardt – Right, because if you're looking at a fenced area. Is that part of the chicken coop or not?

Mr. Benedict – I would say it'd be like a pasture. The variance refers to the stabling area, which would be the coop and any manure piles. The fence then becomes a somewhat separate topic. If it were like a farm there's really no application because it's exempt from it. I think there may be an exemption for it in this situation.

Chairman Reinhardt – He may need a variance for the fenced area, the grazing area. It's separate from the variance request for the chicken coop?

Mr. Benedict – It may be possible, yes. Before you're done, I'd like to see if I could get on to the town website and see if I can get the code up. And, get you an answer before it goes too far.

Mr. Nearpass – I'm not sure he needs a variance for the fence. I think he just needs a permit for a fence, right and then it's just a

Mr. Benedict – It depends on where he's placing it.

Mr. Nearpass – Yes, but if he had to seek a variance, it wouldn't have anything to do with the fact that there's chickens on the inside of it.

Mr. Benedict – Correct.

Mr. Bateman-Ferry – So if you look at the pictures, there's already a small grazing area and I kind of included that in the square footage of the general footprint of the coop in total. So, I think as of now it's about 6x8 is the actually grazing area that's coming with the coop. (Referencing photos) So, there's this coop, with, I don't know if we can call it a grazing area, it's this little outside area, I would just have to make that slightly larger.

Chairman Reinhardt – Why is that?

Mr. Bateman-Ferry – Well just because I feel like the chickens just need more room and I'm not going to let them roam around the yard just to save the neighbors and get them out of the neighbor's yard, so they'd have to be

Mr. Nearpass – I thought the chickens were already going to be there, this was part of a package deal you were getting from your buddy.

Mr. Bateman-Ferry – What do you mean?

Mr. Nearpass – Maybe I recalled this wrong, but I thought you getting the chickens from a friend who's moving out of town and you're getting the chickens and the coop and kind of the whole thing.

Mr. Bateman-Ferry – Well that was the plan, however this just kind of ran longer, so he has since given his existing chickens to a farm close by his house, but he wanted this coop to kind of stay with me, so our plan now is to buy six chicks or however many chicks we're allowed and then raise them to chickens.

Ms. Morley – And before, the man who had the chickens before they were let out of this fence and were allowed to graze. There's not a lot of room there for those six little chicks when they get bigger to graze in that little spot. They need a little bit more than right there, he is correct.

Mr. Bateman-Ferry – And, then in time, I thought about fencing the whole yard, but that's down the road. That's not something I looking to do right away. So in terms of other permits and other things, it's just slightly bigger than I think what we all have in our mind already.

Chairman Reinhardt – What I'm trying to understand here is that as the picture depicts, that fenced in area, is that part of the chicken coop or is that something separate from the chicken coop.

Mr. Bateman-Ferry – It is part of the chicken coop now, they are connected.

Chairman Reinhardt – But it also depends on how the code defines a chicken coop. That's what Al's working on.

Mr. Benedict – I don't see an exception. From what I'm looking at in the picture would be the place they would so called stable and then the other screened area that's the area that they are allowed to roam around, I guess I would consider that all one chicken coop.

Mr. Salsburg – So would I.

Mr. Benedict – If he needs to make the fence further out than that, than I think he'd need a permit for that.

Mr. Nearpass – Does the coop itself need a permit? There was some question last time. Because you can walk into it. Have you come to a conclusion on that, Al?

Mr. Benedict – That's kind of my opinion, if this is what's being built, I would say it does not need a permit. It doesn't look like it's something you can just walk into.

Mr. Nearpass – Okay.

Chairman Reinhardt – Fair to say then anything larger than what we see in the picture, any fence, any expansion, any addition, he's going to need a building permit?

Mr. Benedict – I guess I would allow him, if he feels he needs to expand that area that is screened in, a reasonable amount, I guess I would consider that to continue to be part of the coop. If it goes much beyond that then I would say he needs a fence permit.

Chairman Reinhardt – So, how do we then limit to that to when you say what is reasonable? What does that mean?

Mr. Benedict – How about if you put a percentage on it, increasing the area?

Chairman Reinhardt – If he doubles the size of the fenced area, is he going to need a building permit?

Mr. Benedict – Jeff, how big is that area that's screened in?

Mr. Bateman-Ferry – I think it's about 6 x 8. I think that was the ball park that my friend had given me.

Mr. Benedict – I think if you doubled that, I'd be okay with that. Anything beyond that. Does that help, Mike?

Chairman Reinhardt – Yeah, I think so. I think we should be able to move forward with the request. Jeff, do you have plans on expanding that fenced in area?

Mr. Bateman-Ferry – My thought was just to put extra feet, like you said if we double it, just double it in length right off the end. I guess by not taking the chickens right away kind of gives myself time to put a little more into it. Even at first glance, just extending from the end. Making it long.

Chairman Reinhardt – So, if the board decides to grant the variance and it's a condition that the fenced area as seen and depicted in (inaudible) should not be more than doubled. That's the limit of the fence. Anything more I think you're going to need a building permit or you're going to need another variance.

Mr. Bateman-Ferry – Again, I don't know the exact height, but I can keep it that height and just extend it twice over, or once over.

Chairman Reinhardt – Once over. Doubling it would be once over.

Mr. Bateman-Ferry – Right.

Chairman Reinhardt – I think I know Sarah's opinion, but is the board good with that? Matt?

Mr. Nearpass – Yeah, I think so. So you'll be able to double that and obviously it wouldn't be in a direction I guess that would make it closer to the, we can't account for what direction you're going to double it in the variance, right, so we're going to give you distance from your lot line and as long as the doubling doesn't infringe on those distances, does that make sense?

Mr. Bateman-Ferry – Yes.

Chairman Reinhardt – Donna, your thoughts? This is just on whether or not it's a condition to the variance to double the fenced in area.

Ms. Morley – I'm good with that.

Mr. Salsburg – I'm good with that.

Chairman Reinhardt – Sarah, I think it's safe to say that you don't like that.

Ms. Mitchell – I don't like it, no.

Chairman Reinhardt – Alright, just wanted to make sure what page you're on.

Anything else before we run through the criteria?

Mr. Nearpass – Mike, can you run through the conditions of the criteria again? There were three of them or four.

Chairman Reinhardt – I think the conditions would be a maximum of six chickens, no rooster, the waste will be taken off site and the current fenced in area is permitted to increase no more than double the size. Alright, any other conditions to talk about? Let's run through the criteria.

First, 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.

The property is located in a relatively rural area in 251, albeit it is a residential area. The applicant has taken some homework and looked at the situation and the conditions of being a maximum of six chickens, the waste being taken off site, they'll be no roosters and the fenced in area will be no more than double. There is a neighbor that appears to be trying to be reasonable. I can't really say that the neighbor is for the chicken coop, but not directly against it. I think his main concern is the noise and the waste. Seems like the waste is being taken care of and it also, the location of the proposed chicken coop would be further than 100 feet away. Would anyone like to add anything else to the first criteria?

Second, the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. Due to the dimensions of the lot itself, it's a virtual impossibility.

So, I think the applicant is doing everything he can to minimize the effect of the chicken coop being on his property. Would anyone like to add anything else for the second criteria?

Third, the requested area variance arguably is substantial. As indicated in number two that it's an impossibility due to the size and dimensions of his property however it seems to have mitigated the issues by limiting the number of chickens, disposing of the waste offsite, no roosters, minimizing the noise and also the fenced in area to be no more than double the size. Would anyone like to add anything for 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. And this primarily is the waste is going to be disposed of off-site as well as they'll be no roosters. Anyone want to add anything 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. And, also just to go through quickly the conditions. Maximum of six chickens, the waste will be taken off site, no roosters, and the fenced in area should be no more than double the current size. Anyone want to add anything else for the criteria or the conditions for the proposed variance?

Entertain a motion for approval.

Mr. Nearpass – I'll motion for approval.

Chairman Reinhardt – Thank you, Matt. Second?

Mr. Salsburg – I second.

Chairman Reinhardt – Thank you, Fred. All in favor? Opposed. (Ms. Mitchell)

Thank you Sarah. The variance is granted. Good luck Jeff. Be a good neighbor.

Mr. Bateman-Ferry – Thank you. Will do.

Mr. Salsburg – I might say that this is a measure of being consistent with that other chicken program that we did. There was dissenting neighbor. Very similar to this and we do the same thing both times.

Chairman Reinhardt – Good luck. Hope the kids have fun with it.

Mr. Bateman-Ferry – Thank you very much. I'm glad that worked out.

RESOLUTION:

Jeffrey Bateman-Ferry, 7755 State Route 251 Chicken coop location area variance

Appl. No. 12-Z-2020

At a regular meeting of the Town of Victor Zoning Board of Appeals held on August 17, 2020 the following resolution was adopted:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on July 20, 2020 from Jeffrey Bateman-Ferry, 7755 Victor Mendon Road, Victor, NY, requesting an area variance for the location of a chicken coop whereas §211-19A(4) via §211-20A states housing of poultry is not permitted within 100 feet of any lot line;

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 July 26, 2020 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; 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 August 3 and 17, 2020 at which time two neighbors signed a petition in support and one neighbor submitted a letter expressing concern,

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 property is located in a relatively rural area of State Route 251, albeit it is a residential area. The applicant has looked at the situation and agreed to the conditions of a maximum of six chickens, the waste being taken off site, no roosters and the fenced in area will be no more than double the current size. One neighbor's main concerns are the noise and the waste. The waste is being taken care of and the location of the proposed chicken coop would be further than 100 feet away from this neighbor.

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: Due to the dimensions of the lot itself, it is not possible. The applicant is doing everything he can to minimize the effect of the chicken coop being on his property.

3. The requested area variance is substantial.

Justification: It is an impossibility to achieve this in some other manner, due to the size and dimensions of applicant's property. However issues seem to be mitigated by limiting the number of chickens, disposing of the waste offsite, having no roosters minimizing the noise and also limiting the fenced in area to be no more than double the current size.

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

Justification: Primarily because the waste is going to be disposed of off-site. As well as there will be no roosters.

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 Mr. Salsburg:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application of Jeffrey Bateman-Ferry, 7755 Victor Mendon Road, Victor, NY, requesting an area variance for the location of a chicken coop whereas §211-19A(4) states housing of poultry is not permitted within 100 feet of any lot line; BE APPROVED.

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

1. Per Town of Victor Code §211-8C(5)(a, b) this variance expires if a permit or extension is not granted within one year from the approval of subject variance.
2. Maximum of six chickens.
3. Waste will be taken off site.
4. No roosters.
5. Fenced in area should be no more than double the current size.

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

Michael Reinhardt	Aye
Mathew Nearpass	Aye
Sarah Mitchell	Nay
Donna Morley	Aye
Fred Salsburg	Aye

Adopted: 4 Ayes, 1 Nay

Chairman Reinhardt – Next application is Bank of America. Who's presenting for Bank of America?

Mr. Arthur Kuyan from Stonefield Engineering

Chairman Reinhardt – Hello Arthur.

Mr. Kuyan – How's it going, guys?

Chairman Reinhardt – Good, how are you?

Mr. Kuyan – Good.

Chairman Reinhardt – So, I take it you heard some of this and you being an engineer, I'm going to take a wild stab at this that you've asked for variances before so you know the drill.

Mr. Kuyan – Yes, I do.

Chairman Reinhardt – We're going to let you make the presentation, we'll ask some questions and then we'll go from there.

Mr. Kuyan – Great. Appreciate it guys. I don't know if we can pull up the plans, is that something where I can share my screen. Alright, perfect. Ok, if you can just go to the signage plan to start with that would be great. Good evening ladies and gentleman of the board, I appreciate you taking the time to go through this application with us, so I'm sure everyone is aware the project site is located at 7651 Pittsford-Victor Road, which is also known at New York State Route 96. On site currently, is an existing Panera Bread drive-through as well as a Bank of America drive up ATM. A project that we were also involved in and approved before the Town of Victor Planning Board on March 26, 2019. Zoned commercial district as well at the Route 96 and 251 overlay district. Before we get too much in the proposed design, I kind of just want to go through some of the coordination effort that the applicant has put forth in designing and proposing this sign. The applicant is Bank of America. They do understand the Town of Victor does take signage very seriously and in an effort to work with the board and the town to continue to support the local efforts to limit excessive signage, understanding that Route 96 is a primary travelled corridor. The intent of this design was to protect that same character along the corridor. The initial design did consist of a free standing pylon sign as well as four wayfinding signs that totaled three square feet each. In coordination with Marty Avila, he did give us some comments that the maximum square footage for wayfinding signs are two square feet as well as the board and towns necessity to really limit the signage to monument signs. The applicant then began some conversations with Panera understanding that two signs on this property may not be the best design and what we've actually proposed before you today is the opportunity to demolish the existing Panera Bread sign and relocate it out of the right of way which would comply with the zoning ordinance and keeping the same area, actually refurbish the sign to have two tenants



on it, one being the Panera Bread, which would essentially get shrunk half in size and just add a Bank of America identification right below that. The sign would stay the same area in the allowable 20 square feet and the same height as well. The location would change slightly and you can see that on the signage, page C-4. As I mentioned previously, it would actually getting relocated out of the right of way and pushed north of the property. In addition as mentioned before, we would be proposing four wayfindings, two square feet in total. The reason that we're here before you this evening is for a variance to have two separate tenants on one sign. I think there's some factors that we need to consider when considering this variance. The goal really in installing this sign is to allow patrons and people that are using the Bank of America ATM to direct them to show them where it is. It's not a matter of advertising or paying additional business, but more to allow patrons to know exactly where they are in the ATM. And I just want to let the board know and kind of understand that as you're driving down Route 96 you will see limited signs and a lot of the business identification happens to be on the building face itself. What we have here is really a pretty small, about 70 square foot ATM. The identification on it is generally pretty small and you can see from the photos that was shared that it's somewhat difficult to understand what that is. And, you can actually see in itself there's only one hard part, there's about eight parking spots that front that ATM, so in the event that Panera is busy, it would be a little difficult as you're traveling down Route 96 corridor to even identify what that is. So, what we really want to do is understanding that the ATM has limited space to have a sign that can really show the people driving on Route 96 exactly where it is, to identify it and have enough time to make that turn is add that additional identification sign. And again I just want to stress that the sign itself is not getting any bigger and we're take the opportunity to move it out of the right of way. With that I'd like to open it up to any questions that anyone may have.

Chairman Reinhardt – Matt, questions?

Mr. Nearpass – Sure. I was at the site today. An ATM itself is within a kind of a structure. It's got that sign structure built around it, right? Just looking at the picture we can all see here, you do have signage there. It's almost looks like it's about the same size as the Panera Bread sign is there already. Right?

Mr. Kuyan – I would just venture that where the ATM is located is set back pretty far into the property and this is at a bird's eye view of just right as you're approaching the property. I mentioned before there is an opportunity for cars to park in front of that ATM limiting the visibility as you can see the sign itself will actually portray the Bank of America symbol. A little more boldly than what you can see on the ATM.

Mr. Nearpass – The issue I'm having with it is, it's really just an ATM. Do you have other examples of where we made signage variances for ATMs?

Mr. Kuyan – I'm not sure if I have another example, I will just say that we understand that it is just an ATM we are limiting the proposed design. We're not proposing a new sign. We're not asking for any sort of area variance.

Mr. Nearpass – You want the same size sign at Panera Bread. Right, you want to split the square footage, albeit move it out of the easement. Which sounds like it will move it farther away from the road. It's going to say Panera and Bank of America. Don't you think people are going to think there's a Bank of America there, not just an ATM.?

Mr. Kuyan – Well I would just venture to say that this is somewhat of the future of banking. Less and less you'll see stores being installed and it's more ATM, these drive up ATMs. The intent is just to identify that there is a Bank of America structure here that can serve as an ATM. Understanding the concern that

Mr. Nearpass – It is an ATM. It's an ATM with a structure built around it.

Mr. Kuyan – Absolutely. The bank does understand that. We quickly do install; the applicant typically proposes whether it being a free standing pylon sign or its own sign located somewhere on the property. We have tried to work to find some sort of middle ground. Speaking with Panera, they were willing to kind of concede and split their sign in half and we thought the location actually situates a little better where it's not so much on a hill. It's set back a little more on the property and you can allow whoever is driving down Route 96 to see that it's an ATM and have the time to make a turn on the site. Just provides a way for essentially, an additional way finding sign. So people are aware that there is an ATM.

Mr. Nearpass – I think you'd find and we received feedback over the years even the size of the Panera sign as it is today is difficult for people. People see it too late. They are going too fast they generally have to either blow by it, stomp the brakes or realize they can go past it and . . .

Where is the relation to the existing sign are you proposing to put the new sign, the new kind of split monument sign?

Mr. Kuyan – You can almost think of it as, if you can see that temporary sign just to the north of the drive aisle, just to the north of the temporary sign. It's going to be generally right in that area.

Mr. Nearpass – Don't you think that would be, you're going to cut the signs in half and you're going to move them far away from the traffic coming towards it.

Mr. Kuyan – Personally when I drove down this corridor, I had difficulty seeing the sign until I approached

Mr. Nearpass – Won't this make it tougher? This will make it more difficult. Looks like it's probably at least 100 feet towards

Mr. Kuyan – We did do a lot of analysis into this and the line of site from the driver, they would actually be able to see it and have more time to see; it will actually be more situated with the driver's eye being set back rather than being pulled forward to the driveway.

Mr. Nearpass – I'm not sure I'm there yet. I'll let some of the other board members talk. This is kind of a tough one for me to kind of visualize it would be an improvement over what's already there as well as kind of give merit that an ATM is more than what it is. And, an ATM already has signage around it. I'm assuming that didn't need a variance to have a sign that large on that structure.

Mr. Kuyan – Again, you're only seeing that Bank of America logo traveling south to north. This will obviously be a double sided sign that you can see from both travel ways and a little more bold to really understand what that use is.

Chairman Reinhardt – Donna, questions, comments?

Ms. Morley – No, Matt asked the two questions I was going to ask, so that's fine. Thank you.

Chairman Reinhardt – Sarah, questions, comments?

Ms. Mitchell – No, I just want to add that I pretty much echo everything that Matt has already brought up. All his points I think are valid and good points, so I don't really have anything further to add besides what he's already said.

Chairman Reinhardt – Okay. Thanks. Fred, questions, comments?

Mr. Salsburg – I get the impression that it's reducing the impact of the sign. Having two names on it is of some assistance to anybody looking for those two places and not as bold as it is now. I don't think their asking for very much.

Chairman Reinhardt – I seem to recall this property was addressed for at least one variance if not more. Al, do you recall how many variances were for this piece of property?

Mr. Benedict – I don't recall the exact number, but there were several probably somewhere between four and six.

Chairman Reinhardt – I think you're right. I know there was more than one, but there's was quite a few and I think the board wrestled with this quite a bit to try and get Panera in there to begin with and there was some signage issues that we tried to address and now there's more signage issues. And, anytime I see that there's one variance about another and another that it doesn't fit. That there's problems with the request. And, now we're looking at an ATM and to touch a little further on what Matt was talking about it is an ATM and if we start granting variances for ATMs whether they are inside the restaurant or retail or outside then we're going to

hear from the whole host of how ever many ATMs are out there to say, well since our ATM is on that property then we'd like some signage and there's going to be ATM all over the place. And I'd have a big concern about that. And also, too is you may have heard Arthur, earlier and I think you know that variances run with the land so while this may be just for Bank of America for now, there's no guarantee that Bank of America will be in that facility. They may move out. Something else may go in there and we're going to have to look at the sign going there if we really don't take a careful look at it. I don't see it. I don't see the need for it. I think Matt's point is accurate that there is already some signage on the ATM itself. I don't quite see the need for it.

Mr. Kuyan – If I can, I think it's all great points. I think that's the benefit of having this type of meeting is to understand the back and forth and the only thing that I will say and I just want to harp on again, the limited visibility that's on the Bank of America ATM itself and understanding that you don't want to set a precedent of granting these variances project to project. I think that this is somewhat a unique scenario where there is an existing sign and we're not trying to amplify any of the signs dimensions or areas and we're really just trying to add on to it and understanding that it is just an ATM and I think we really need to understand what that means and even when I started this field the difference of the amount of ATMs that are proposed compared to the amount of banks, free standing stores. It's really what the Bank of America is investing in. A lot of these free standing ATMs. And, lastly the point of if Bank of America just leaves. Bank of America it was a priority to get into the town of Victor and not only that they did find a long term lease to be at this property and they are passionate about servicing the people of Victor and they just believe that this sign will help not only the people of Victor but Bank of America itself to understand that there is an ATM there.

Chairman Reinhardt – Al, I'd like to touch on your comments and it seemed like there was some focus on the lighting issue. Can you expand on that a little bit? Is it the structure itself or the sign or what's the problem with the lighting?

Mr. Benedict – I went out to the existing Panera sign and it had lighting on both sides of the sign illuminated and one was aimed higher than the 45 degrees above the ground and my comment was if this is approved and you redo the sign then the lighting needs to be adjusted to meet code.

Mr. Kuyan – We'd absolutely do that.

Chairman Reinhardt – Arthur, this ATM would be open 24-7?

Mr. Kuyan – Yes.

Mr. Nearpass – It's already existing, isn't it?

Mr. Kuyan – Yes, it's been constructed. This is just for a separate, the sign for that ATM.

Chairman Reinhardt – How long has it been there?

Mr. Kuyan – It got approved in March, I want to say the construction finished sometime around 2019. It might have spilled over a little bit into 2020. That's another thing, usually these two packages are conjoined, but really there has been feedback from people within the Bank of America people using the ATM that it's just a little difficult to really see it as you're driving knowing it's there without previously knowing that it already exists at this location.

Chairman Reinhardt – How does it measure up to other Bank of America ATMs regarding business? Traffic, I don't know what the right word is, but if it's really a machine that people go up to and either make deposits or get the money there must be some statistics on how well or poorly it's doing.

Mr. Kuyan – I definitely don't have those statistics with me right now, but I can definitely look into and see if that's something the bank can provide. I will say that there hasn't been any complaints about it and really it's an area that the bank was very passionate about getting in to.

Chairman Reinhardt – I understand that and I think to me it might help and I'm not hearing that there's a huge concern. It's the visibility piece. We've heard that same complaint from applicants time and time again. Nobody can find us; nobody can see us. But then when we ask, well then show us some kind of statistics or show us something that other than just your opinion, your point of view that says well they can't see. Well if you put it into numbers, if Route 96 and that area I've got to think it's relatively busy and albeit, we are in a unique time, Covids screwing things up for a lot of businesses, but generally speaking I don't know one way or the other whether the location and/or the lack of signage is having a negative impact on that ATM.

Mr. Kuyan – I can definitely talk to Bank of America and see what we can do and I just want to I'm sure I've said it before, one more time reiterate that even though it is in just an ATM, I don't even like using that term, because I can't even remember the last time I stepped foot in a bank. We're just not afforded the opportunity to really identify that it is a Bank of America. If you look at the sign that's located on the ATM compared to some of the signs that are on the larger buildings with the larger wall that provide a little more visibility I would venture to say that it's generally much smaller than what you could find in that corridor.

Chairman Reinhardt – My take on that, my experience and by no means am I computer savvy, tech savvy. You can tell by the gray hair I'm a bit of an older dog, but when I do look for the bank I want to go to and whatever direction I'm going to I'll open up my phone, I'll tap on my bank and I'll say where are the ATMs and they flip up to where they are. I'm not relying on signs. I'm looking at a gps global piece, ok, there's the one I want and off I go.

Mr. Kuyan – Definitely don't disagree with that.

Chairman Reinhardt – Let's hear what everyone else has to say. Those are my thoughts and concerns on what kind of signs are out there and do you really need a sign.

Mr. Kuyan – I think it just helps a little bit with making sure you're turning into the right driveway sometimes, even when you're using a gps.

Chairman Reinhardt – Matt, any more thoughts on that?

Mr. Nearpass – I think the structure there has plenty of signage and I'm not even sure if the structure, Al, considered a building? What allows the coop that goes around the ATM to use the language we talked about earlier, to have signage?

Mr. Benedict – I would say it's a structure by town code, but I wouldn't call it a building, so to speak, by building code.

Mr. Nearpass – I was just reading the signage codes said that a building is allowed to have a sign on it, so I wasn't sure what do we have to call this thing to have a sign on it.

Mr. Benedict – I would consider it a place of business in which case you could have a sign on the ATM. The problem is that this is all on one parcel and you have two businesses on one parcel and the code says you can only have one name on the sign and what he is asking for is two names on the sign.

Mr. Nearpass – I understand that part. We get that quite a bit. I just can't get past, they've got ample signage, it's an ATM. I agree with Mike's points and everyone else's, so I'm good for now.

Chairman Reinhardt – So, Matt, if let's say, Bank of America came back and says look, it's been up and running for eight months, it's getting hammered, people can't find it. Would that make a difference to you?

Mr. Nearpass – It would make a difference. If they came back and said, a year from now or whatever and said we've got new data. Take a look at this data and let's talk about it, I'd be willing to bend or discuss it. My gut tells me that there's ample signage and people will find it either the way you talked about or just eventually know that Bank of America ATM is there just by driving by that area. Like I said there is signage. It's obviously if you go to Panera Bread, where it is. But yeah, if you have data that shows nobody can find it. It's one of our poorest performing in the area. I'd be open to the discussion. I'd welcome the debate.

Chairman Reinhardt – Okay, thanks. Donna? What do you think?

Ms. Morley – Same way Matt does. What he just said, I'm in agreement with.

Mr. Salsburg – I think people should get as much notice of a potential stop as they can and I think the sign is good for that.

Chairman Reinhardt – So, you're in favor of the proposal?

Mr. Salsburg – Yes, I think the ATM is hard to see.

Chairman Reinhardt – Okay. Sarah, what do you think?

Mr. Salsburg – And, I'd feel bad if people went by it and had to turn around on that busy road.

Mr. Nearpass – Fred, just a question, does the ATM that sits in the Kwik Fill deserve signage on the Kwik Fill? Different company.

Chairman Reinhardt – The newer one on 96?

Mr. Nearpass – Any one. Go into a Kwik Fill, go in to a gas station, there's an ATM in there provided by a third party that's got a name and the does that ATM deserve to have signage out there with Kwik Fill?

Chairman Reinhardt – That was my point before, whether in the restaurant, retail or outside of it, it's going to be a runaway train if this starts happening.

Ms. Mitchell – My only other comment would be, when you ask for data saying whether the ATM is not getting business or getting business I think it's too soon to get that data because if it's only been open for eight months, we don't really have anything to compare it to, so I think it's too soon to ask for that. That's just my thoughts.

Chairman Reinhardt – Okay. Alright, Arthur anything you want to add, comments, concerns?

Mr. Kuyan – I think the only thing that I would just want to finish on is that if you are driving south or north to south be able to tell if there is an ATM it's only driving south to north, we think we'd give an opportunity to people travelling in that direction to identify that there's an ATM inside, but obviously understanding the board's concern and how seriously signage is taken here, the applicant believes that we've kind of taken the necessary measures and have the justification to grant the variance, but we'll be happy to continue to work with the board to get all the data that you guys are requesting to see if we can come to some other

Mr. Nearpass – Arthur, even if you get the sign in that location, even by the time someone moving north saw that sign they would have been past the stop light to be able to turn in to there because you can't turn left into the area where the ATM is, so even in the new location by the time you saw that sign you should have turned at the light, the Walmart plaza light. Because you can't turn left into that part of Panera.

Mr. Kuyan – That’s correct.

Mr. Nearpass – And, that was quite the debate when the whole site was kind of unfolding, Panera had wanted signage up by McDonalds but it just wasn’t their parcel. And, so if it was all one parcel that would have obviously been the ideal place to put all the signs but that’s just not how the whole site worked out, but once you go past that light, you’re turning around or you’re going to Chase.

Mr. Kuyan – Absolutely, it’s just a way to know that it’s there.

Ms. Morley – Why do you want to move it from the spot that it’s in already? Why can’t you put the Bank of America on the sign that’s already there?

Mr. Kuyan – The applicant believes it is a better location studying the area and the movement and we’d be happy to leave it as is. I would just venture to say that currently it exists in the right of way. I would say about 7/8 of it is in the right of way. We want to actually take it out of the right of way because that’s an existing non-conforming and it doesn’t comply with the town code, just gives us an opportunity to relieve an existing condition that doesn’t comply with the town code. But we would be open to some different location if it helps the board understand where the sign should be.

Mr. Nearpass – I think they have a variance for the right of way or was that an oversight?

Ms. Morley – I was just going to ask that, too, thank you.

Mr. Benedict – I don’t believe so. I think it was just installed in the wrong place.

Chairman Reinhardt – I think we might be at a crossroads here, looking for some direction from you, so you’ve got some choices. We can put this in front of the board tonight, make a decision because we do have comments from the county planning board and they are really not making any formal recommendations. Before I go any further, Suzy, do you see anybody at this point watching the meeting?

Ms. Mandrino – There are no comments at this time.

Chairman Reinhardt – We can make a decision tonight and I think you might be able to tell from the tone of the board it may not go well. We can carry it over and you can try and get us some more data to show us really why it is you need the sign and primarily the data shows that that ATM is not performing as well as it ought to be performing. And the other is you come back after a year and say hey look it’s just not working, we need signage here and here is the data. To Sarah’s point it could be a bit soon. So, open to some thoughts from you on what direction would you like to go. We’d like to try and work with you. We try to do this for all applicants. But right now I don’t think there’s enough there and I think the primary concern is just an ATM



and you're right, that is going to be a wave of more people using ATMs, not stepping into a building itself, but to give signs to all ATMs no matter where they are I think is going to be a dangerous road to go down.

Mr. Kuyan – Understood. I would like to table it to continue it just to see what information I can get from Bank of America understanding Sarah's concern and everybody's else's concern. I would at least get the opportunity to review that data and if anything after that I can coordinate with the board to withdraw, but as of now I'd like to continue it, if possible.

Chairman Reinhardt – Okay. I think the board is good with that. We always like to see as much information as we can before we make a decision and give an applicant every opportunity possible for the variance. I take it the board's okay with that?

(Good)

We'll carry it over for, how long do you want, do you want the next meeting? Or do you want it a month or how much time do you need.

Mr. Kuyan – I think we can do the next meeting. I think I should be able to get that information.

Chairman Reinhardt – Tuesday, September 8, we'll come back and hopefully you got some data for us or any other information you want us to look at. Okay?

Mr. Kuyan – Thank you very much everybody.

Chairman Reinhardt – You're welcome. Look forward to seeing you.

Next application is the Caldwell fence. Who's making the presentation?

Mr. Brett Caldwell – Good evening everyone.

Chairman Reinhardt – So, you're looking for 140 foot fence that is to run parallel to County Road 41 and the problem at least that we're looking at is primarily it's the position of your house. And, since it's the front door faces looks like a shared driveway and your side yard, this would be the northern piece to your property runs parallel to County Road 41, right?

Mr. Caldwell – Correct.

Chairman Reinhardt – And, you have concerns because you don't want your children to run out in the road.

Mr. Caldwell – So, that tree line there, during the spring/summer it's fully grown in with bushes and everything like that and it's really hard for them to get out. That thins out a bit come winter or fall and we don't even use the front door. I think it's been opened about 10 times maybe since

we've lived here. So, all access is through that garage that's much closer to County Road 41 than the front door. So basically, we want to put a fence from pretty much if you look at the bottom picture, the very far corner there to where it would come west to east to where it would be even to the back of the house, because everything is pretty well filled in and that would basically keep we have a three year old and a two year old and keep them from being able to bolt if we are not paying attention for a second. You know how fast those ones move.

Mr. Salsburg – There's another survey map that's got the fence line drawn.

Mr. Caldwell – I think I turned in images where I just on my phone put in a line in there. Or maybe the survey map as well. But basically the key point would be that it would barely be visible from the road or to any of our other neighbors and the two neighbors that share our shared driveway both signed onto a letter supporting the project.

Chairman Reinhardt – It looks like the majority of the fence which would be to the west is behind the house, so I guess the question to you would be how much fence is in front of the house. You know what the problem here is the front of your house is the front door. And that fence is going to run east and west and your front door faces.

Mr. Caldwell – If you were to draw a line straight up from the front door which is on the east side of the house there, I don't believe it would even go beyond that threshold.

Mr. Nearpass – The fence is, correct me if I'm wrong, I want to make sure we're all looking at the same thing, is just a line drawn on the northern property boundary or near it. It extends from the northwest corner to see where they red car is in the satellite photo?

Mr. Caldwell – Right about there, yeah.

Mr. Nearpass – That's it, just that line.

Mr. Caldwell – Yes, that's all we want. Just a barrier that would stop the kids from immediately making a bolt out into the road.

Mr. Nearpass – So Al that's really what we're saying is the front of the house. I think Al is saying is where your front door is doesn't always define the front of the house, it's the nearest road and the side of the house that faces it.

Mr. Benedict – The front line of the house is the side that faces the road to where you derive access. So that being County Road 41. So the north side of the house is the front line.

Mr. Nearpass – So the whole fence is forward, what Al calls the front of the house, but nobody else will, looking at it. Al goes by the technicality of the code. The front of the house is really where the garage door opens to in this case.

Mr. Benedict – So yes, that whole fence is forward of the front line of the house.

Mr. Nearpass – I'm good I think that clarifies things for me.

Chairman Reinhardt – Donna, questions?

Ms. Morley – None.

Mr. Salsburg – I'm a little confused where the fence needs to end without a variance.

Chairman Reinhardt – It can't. Because County Road 41 is the road that they have access to, as odd as it sounds, the front of the house is where the garage door opening is.

Mr. Salsburg – But the driveway comes in from

Mr. Nearpass – Shared driveway, it doesn't matter. The front yard is where that car is parked in the satellite photo, technically.

Mr. Salsburg – So that whole side?

Mr. Nearpass – That whole thing parallel to it.

Chairman Reinhardt – Right, because County Road 41 runs east and west and the driveway that gains access to County Road 41 is north then the front of the house faces north.

Mr. Salsburg – Well I guess I think that's a pretty unique and rather unfortunate turn of events and I can't believe the code was written for something like this.

Chairman Reinhardt – The code isn't going to catch everything. That's the whole reason for variances. Situations like this come up, is to analyze them and see whether a variance is fit for this particular piece of property.

Mr. Nearpass – In this case Fred, if that access road that accesses those three homes was not a private drive, if that was a town road then that would be the front of the house, right? If you drive down there we would all call the front of the house the same thing but it's just a

Mr. Salsburg – I think it's a pretty minor variance.

Mr. Nearpass – I do have a question for the applicant. So there were a couple pictures that were shown of the (pictures shown) that seems like quite a barrier there.

Mr. Caldwell – Well that's what I was saying during spring and summer, when these photos were taken, it is. Come fall and winter when there's not a foot of snow on the ground that opens

up quite a bit in the area where we'd like to put the fence which is why we're requesting the permit, variance.

Mr. Nearpass – So that's not a stream or a drainage ditch or anything there?

Mr. Caldwell – The drainage ditch is actually on the outside of that tree line, on our property, closer to the road. That tree line is on our property and then right now there are blackberry bushes and things like that that fill in the gaps. But when the seasons turn those all disappear, for the most part.

Mr. Nearpass – Have to you considered adding additional landscaping or vegetation? Just trying to explore all options.

Mr. Caldwell – We did look into it a little bit. To fill in all the holes, it would be difficult.

Mr. Nearpass – Okay.

Mr. Caldwell – Then it's a matter of do you find the right plant that doesn't die off during that time of year as well.

Mr. Nearpass – I was just thinking of hedging or, how old are your kids?

Mr. Caldwell – Two and three.

Mr. Nearpass – So, you've probably got a 3-5 year moment in time, to your point, it's not as easy to herd them.

Mr. Caldwell – Sure. Yes.

Chairman Reinhardt – How far from the right of way do you want this fence?

Mr. Caldwell – It's a considerable way back because that hedgerow is not straight. So we'd have to set it back even far enough from the hedgerow so that we can do it in a straight line, too.

Chairman Reinhardt – The boards gets in trouble with a nebulous term like considerable amount. We need a number. The driveway is 60 feet from the right of way or thereabouts.

Mr. Caldwell – It would be 20 foot in from the driveway, so that'd be 40 feet from the right of way, probably?

Chairman Reinhardt – So, if the board grants this it would be acceptable for you 40 feet from the right of way?

Mr. Caldwell – Again, I’m using ball park numbers, I’d have to go out there and actually measure it. My apologies.

Chairman Reinhardt – Well if the board decides as a condition to make it 40 feet and then you go out and measure it?

Mr. Caldwell – What is acceptable to the board, just so I can have the most leeway?

Mr. Nearpass – I think we have some time here. Ideally we’d like to see your survey map with it delineated on it, the right of way and where they 40 foot boundary is, or 35 or 45?

Mr. Caldwell – Our apologies, when we found we needed the variance we only had a couple days before the cutoff to get in the paperwork for the variance.

Mr. Nearpass – That’s fine. It’s either you going out and getting the exact number or some type of record of it. One final question, have you ever just considered a two foot tall fence or something that you just put up there. We’ve had other applicants come in before and they did something similar when they had to put in front of their house, one was up on High Street. Al, what’s the height for which it’s really not a fence? Is it 24” tall or

Mr. Benedict – The exception is 24”, two feet.

Mr. Nearpass – It’s just an idea, but if you had something that was just a couple feet tall and you were looking at something temporarily you now for a few years that might also be something you consider, too.

Mr. Caldwell – My wife would like to fence in a bit more in the next few years, but this would be the first stage of fencing in like a third of the property.

Mr. Nearpass – So part of it is, if that’s the case if it’s really part of phase one then you’re going to need another variance when you go to connect the corner, you know what I mean? It always helps try to give us as much of the big picture as humanly possible because if your plan is to have the fence go from where it’s drawn as well as start to go south from that northwest corner, we may want to talk about that now. I don’t know if we can because if it wasn’t part of the public announcement I don’t know what that does, but if you’re also thinking of this is also going to be a fence, fence and that’s ok you’ll have to come back in front of us if you want to start piecing this together.

Mr. Caldwell – That would be like five or six years down the road. So we weren’t even really considering it right now. We looked at the pricing and it was just ludicrous and so we just want that front part for the safety of the kids.

Ms. Morley – What type of fence are you looking to put there?

Mr. Caldwell – Forty-eight inch high, 3rail split rail with the wire mesh. So, it would fit with the other properties in the area that have farms and what not. They have the same type of fencing.

Ms. Morley – Okay. Thank you.

Ms. Mitchell – Honestly I drove by this property like three times before I realized where it was, so I'm going to say a split rail fence, I'm not even sure anyone will notice that the fence is there. I understand why code is the way it is, but for this particular instance someone pulling out of the driveway their site on either side of the road isn't going to be impeded by this. So I don't really think it's going to affect anything. So those are just my thoughts, comments.

Chairman Reinhardt – Okay. Good. I like the comments because I think that is the intent of this section of the code is not to create obstructions for those in and out of driveways and I don't think, at least for this, the intent of the code is going to be served.

Mr. Nearpass – Question for you. Is it, I don't think it's ever come up in these situations but could we just redefine the code where the front of the house is, with a variance and then this goes away.

Chairman Reinhardt – No, I think that would be rewriting the code. I think what has to happen here is if this situation comes up, it's really incumbent on me then. . .

Mr. Nearpass – Not rewriting it for all of Victor, but for this particular applicant can we change or override the front of his house?

Chairman Reinhardt – I think that is what a variance is for to carve out an exception to what the code is directing the public to say this is the definition of the front of a house and here is where the fence is and then it creates the zoning board to review these application and carve out an exception, so maybe not exactly the answer you're looking for, but I don't think we can redefine what the front of the house is. The code tells us what the front of the house is. We can look to what we believe the intent of the code and in my opinion and I think Sarah probably agrees the intent of the code here is you don't want to put obstructions in front of the house so that creates a danger to whether the people exiting or entering their residence or the main traffic on the thoroughfare. Al, do you have any thoughts on the intent of the code here?

Mr. Benedict – I would agree with that. Some is to the point of aesthetics, but I think that's probably the lesser concern than the obstruction of not being able to see to get out of your driveway.

Chairman Reinhardt – We're dealing with a four foot fence. It's not a six foot fence. It's not a solid, stockade fence. I think a split rail fence you can see through it. Aesthetically, it's not as bad as a six foot fence that you are really trying to keep things in and I don't want to burst your

bubble over there, but kids are going to find a way to get through split rail fences. Might slow them down a little bit.

Mr. Caldwell – That’s all we’re looking for to be honest.

Mr. Nearpass – He said he was going to put wire mesh there. That will catch em.

Mr. Caldwell – To kind of reiterate the point that Sarah made is it will not be visible but for a brief second even from the road to anyone passing by and we do have the letter from the two neighbors that we share our shared driveway with. Both supporting this.

Chairman Reinhardt – I think we need to know where the fence is. Where you are proposing it is, instead of just a line and word fence. It doesn’t really tell us where it is. Get a survey, stake it out or I think we need to have you come back and tell us exactly where you want that fence to start, to stop. I didn’t see any pictures. You can give us a photograph of what you’d like the fence to look like or something similar. I think that would help us. So if you’re open to that idea I think the board would appreciate that.

Fred, did I ask you if you had any questions or comments? Might have skipped right over you?

Mr. Salsburg – You covered it good.

Chairman Reinhardt – So I think our next meeting is September 8. Is that enough time to you to as least to gather?

Mr. Caldwell – I’d literally need a day.

Chairman Reinhardt – We don’t meet every day. We meet in those cycles, so.

Mr. Caldwell – My question is is there a rule governing how far away from the easement that it needs to be?

Chairman Reinhardt – No, I think the thought that you need to keep in mind is when the board grants variances, we try to grant as minimally a variance as possible if that makes sense, so for example if you wanted a foot from the right of way, it’s probably not going to end well for you for the board. The further you get away from the right of way, the closer that it is to the driveway I think that’s going to sit better with the board.

Mr. Caldwell – Well obviously I’d like it as close to the trees as possible so we still have the most amount of our front yard, is the plan.

Mr. Nearpass – How far do you think you are from the easement?

Mr. Caldwell – I mean that patch, that wood line is probably 20-30 foot across and then you get into the ditch on the other side and then the road.

Chairman Reinhardt – Another thing we don't want and I think I would discourage you to have the fence in the easement or in the ditch. We've had this situation before and that's not going to end well.

Mr. Caldwell – It would be at least 20 feet away from the easement, if that's what's defined as that ditch there.

Chairman Reinhardt – So, if you can identify where the easement, it's in an easement or it is a right of way. It's two different things.

Mr. Caldwell – I apologize, I don't know.

Chairman Reinhardt – We don't know either, that's the problem.

Mr. Caldwell – This is my first time even applying for a permit for anything so.

Chairman Reinhardt – So, where the right of way is, if there is an easement there, identify where the easement is and then from those two spots where you're proposed fence is going to be located.

Mr. Caldwell – I work kind of in surveying so I can get you GPS coordinates for everything.

Chairman Reinhardt – Okay. Good. Any other questions?

Mr. Caldwell – No sir.

Chairman Reinhardt – Anyone else have any questions, thoughts, concerns? Okay, great. Then we will see you back here on the next cycle which is the 8<sup>th</sup>. And hopefully have some data for us and we'll go from there.

Mr. Caldwell – Okay. Thank you all for your time.

Chairman Reinhardt – Thank you for your time and patience.

Okay next BME. I don't think I can say the last name, I apologize. How do you say your name?

Linc Swedrock

Andrey Tovstukha



Chairman Reinhardt – Okay, thank you. You know the drill, right? We're going to ask you some questions and before we do we'd like to hear your presentation on why you'd like the variance.

Mr. Swedrock – With BME Associates. We're here tonight. We're asking for a variance to allow an additional dwelling unit on the 1135 Willis Hill Road. Our proposal is to add an addition to the existing house and extend a breezeway to the north with a proposed garage and then the garage would include a living area up above and then an access drive for the driveway. Basically because it's in the Residential 1 zoning district we're only allowed one dwelling unit, so we're looking to do additional living space above that garage and we're here tonight to look for the area variance and depending on if the variance is granted we understand we'll have to go through site plan review with the town and then we'll be working on additional things for the location of relocating septic tanks and things that like that we'll need to do for the building addition, but that's sort of where we're at and what we're asking for. Andrey is here as well, who can help me answer any questions that you might have about the reasons they're looking to expand the building and build the additional living unit. Crazy times with Covid and things. I think you can understand sort of why this might be a valuable to them and their family.

Chairman Reinhardt – Okay, thanks. So the proposed unit is going to be attached to the current unit?

Mr. Swedrock – Yeah, if you go back to that site plan, the other one, keep going, you can sort of see if you look up in the north, to the top left there, that rectangle at the very top we're just showing an area where we may have to relocate the septic right below that shows the addition to the building and the breezeway. That's sort of hard to see, but there's a breezeway from the existing back of the existing garage to a new garage with a living space above and a driveway that will go out to Willis hill Road.

Chairman Reinhardt – What is your intent for the additional unit? Family? Rental?

Mr. Tovstukha – My in-laws.

Chairman Reinhardt – Let's start with some questions, then. Fred, do you have any questions?

Mr. Salsburg – This is a cobblestone house. Is there any historic aspects of a variance on that? I think it's where Paul Lytle lived.

Mr. Benedict – That's correct, Fred.

Mr. Swedrock – Where we're connecting and we are connecting in the back to the garage area and we're trying to minimize, we're trying to keep the historic building not really trying to touch it and I know that the architecture we're going to try to work in to be consistent sort of with how the building looks and things. Not cobblestone, but colors and

Mr. Tovstukha – Actually it could be cobblestone because the garage doors would take most of the area, but where the cobblestone would go to match existing building it would blend the two buildings together so it looks like it belongs there.

Mr. Swedrock – Okay. Sorry about that. I didn't even know.

Mr. Salsburg – They'll be a new driveway?

Mr. Swedrock – Correct. New driveway.

Chairman Reinhardt – Other questions, Fred?

Mr. Salsburg – No. I'm just kind of uncomfortable that I may not have a good understanding what the proposal is.

Chairman Reinhardt – Okay, well lets gets some more questions and we'll give you a chance to follow up. Sarah, have any questions?

Ms. Mitchell – I would like to know what is going to be in this living space. Is it just bedroom, bathroom, closet, living room? What will it consist of?

Mr. Tovstukha – Two bedrooms, living room and the kitchen. And the bathroom.

Ms. Mitchell – So, access to this area would be through the garage doors and the breezeway?

Mr. Tovstukha – That's correct.

Ms. Mitchell – I have a question for Al, next. So, Al is it because this in not attached so if it were attached to the house would this still need a variance? Attached other than by the breezeway. If it were an actual addition.

Mr. Benedict – That would depend on how it's constructed. I'd describe it as another dwelling unit, which is the crutch of the variance that you're adding a second dwelling unit to a property that already has a dwelling unit on it and zoning only allows a single family dwelling on it.

Ms. Mitchell – Is the kitchen what's making it the dwelling or because it has the bathrooms and the bedrooms?

Mr. Benedict – A dwelling unit is defined as a bathroom, bedroom, kitchen and living space. So if by chance they did this as an addition and perhaps shared the kitchen it would just be an addition. In this case I guess I would call it semi attached.

Ms. Mitchell – Because it's only by the breezeway.

Mr. Benedict – Correct.

Ms. Mitchell – I think those answer the questions I have at the moment.

Chairman Reinhardt – Thanks. Donna?

Ms. Morley – So when they are saying a new driveway is it going to come out in a different area than it comes out onto Willis Hill now?

Mr. Swedrock – Yeah, it's going to come out to the north of the house and the driveway now comes off to the south and goes on the other side of the existing house, so it will come straight out from the garage to Willis Hill north of the existing structure, existing house.

Ms. Morley – Ok. Thank you.

Mr. Nearpass – Al, it's really a duplex then? Is that kind of what we're looking at?

Mr. Benedict – That's correct.

Mr. Nearpass – And, duplexes are just not allowed in R-1. Obviously there's quite a bit of land there. Question for the applicant, have you thought about subdividing it, putting in another home on it and doing it that way?

Mr. Tovstukha – We actually like to preserve the land as one piece so that we didn't want to have a potential anybody being able to divide it because the way it looks. So we tried to preserve as much green space as possible, so that's why we decided to locate it next to the house.

Mr. Swedrock – It's 6.1 acres. 6.5 if you count the right of way. The trees and everything, they are trying to preserve the open area in the back.

Mr. Nearpass – How important is that kitchen? It sounds like the kitchen is really whether it's a duplex or whether it's not. What's your thoughts on that? Do you need it to be completely separate dwelling as the code describes it or can it not have a kitchen and utilize more of a central?

Mr. Swedrock – I know you're thinking about it as a duplex, but he's thinking about it as servicing his family in the other unit, so they want to be able to have some separate space and utilize a kitchen and still be able to use the space for taking care of in-laws or whatever, but they still have their separate livable area. You can't sell it, so it's not like they're subdividing it off or splitting it and selling that in the future, it's part of one structure.

Mr. Nearpass – But, to Al's point it's two dwellings, it's a duplex. What defines it as a duplex, is really that existence of the second kitchen.

Mr. Salsburg – Isn't there some language about a mother-in-law apartment?

Mr. Nearpass – I think those types of apartments are what all would call an addition. I think they generally are bedrooms, bathrooms, living spaces and then (inaudible)

Mr. Salsburg – It's not a whole dwelling unit.

Mr. Nearpass – So, I'm just asking the applicant, have you maybe just considered that? If you don't get the variance, have you considered that you can have as much space as you want for your in-laws and you may have to just share the kitchen? Or remodel the kitchen to be bigger to accommodate two families. So we don't make this a second dwelling.

Mr. Salsburg – I think this is a case for a little better definition.

Mr. Tovstukha – It's not ideal, because obviously the living space on the second floor and the existing kitchen if on the first floor of the main house, so it's a little bit of an inconvenience as far as I guess, if the goal is to have the family together that's the requirement we will oblige to it if that prevents us from doing it but ideally we'd like to have the ability to have a kitchen in the new addition.

Chairman Reinhardt – Al, does the code define a kitchen and where I'm going with it I believe in our day and age there's a lot of basements that are refinished and I've been in a few basements and I'm not going to push any of my friends in trouble, but there's quite a lot of amenities in finished basements that sure look like they have a sink, there's a microwave, a small stove that I think from time to time they use for canning or whatever they use. When is a space then, defined as a kitchen?

Mr. Benedict – Sharing any space, I just used kitchen as an example, but we're talking about kitchens there are times that people want to put in a bar sink and a microwave and I guess at that point we'd feel that doesn't serve the purpose of being a kitchen. I guess I would define it as a full sized sink, whatever that means, a full sized range, a full sized oven, a cooktop and certainly the refrigerator is kind of iffy because I guess you could have a smaller one versus a bigger one.

Chairman Reinhardt – So, if the kitchen was taken out of the equation just hypothetically, would the applicant need a variance? And if they say we're not going to put a range, refrigerator, a sink, all those things that you normally find in a kitchen, if they didn't have that there, would they need a variance?

Mr. Benedict – If they were doing it as an addition I'd say no. In its present form, it looks like a duplex. I would think you would have to put in a kitchen. Same with a bathroom or bedroom, I don't think you could build something in a semi-attached form and not have all four amenities in it.

Chairman Reinhardt – The code doesn't prevent (presuming it has space) someone from putting living space in a garage area above where the cars are normally stored and have living space there. Bedrooms, full baths, would they need a variance for that?

Mr. Benedict – Probably depends on how you label the space. I haven't run into that situation other than people do it as a recreation room or something to that effect. I've never seen anything where they've put living space, bathroom and then you go into the house to go to bed. Doesn't mean there aren't some out there, I just don't usually see that. It would be hard to answer that question.

Chairman Reinhardt – I'm trying to get some definitions to what the code does define a kitchen, and living space. I think some of us are leery here when you hear duplex that it has the potential to be rented out to somebody else. But in this case, it appears that this is for family. Some people don't consider in-laws as family, but I do, so but I think we can call them family. That's the intent of what they'd like to do. As we've heard, variances run with the land and what I don't think we want to see is if this does this approved that this particular unit get rented out in a residential area. So that then goes back to well how do we define some of this stuff and what it is, what it's going to be used for and whether or not we can look at this for granting the variance or denying it, but I think we've got to have some basis for it. And, not just say well, it's a duplex, it's a duck and it walks like a duck, so it must be a duck. I think we have to do a better job at defining what this is.

Mr. Benedict – I don't think the code is really going to help you define some of those things. I found in the past it's more – you see what it is that they are doing. I understand your concern because I always had the same concern when somebody proposes something that they are not going to turn around and rent it out as an apartment the next day. You kind of have to play it by ear, situation to situation.

Mr. Nearpass – Al, question, maybe this could help, what would need to be done to the existing plan or layout for you to consider it just as an in-law quarters? Like a traditional in-laws quarters. That people would add to their house.

Mr. Benedict – I would expect to see it as an addition attached.

Mr. Nearpass – But it is attached. I'll play devil's advocate.

Mr. Benedict – I would call it semi-attached. Code doesn't have that in there.

Mr. Nearpass – It defines semi-attached?

Mr. Benedict – I don't know if it defines it, but what the code says is for R-2 districts you can have single family duplexes or semi-attached single family homes. It's a tough one to define.

You run into this situation every time someone proposes something like this. How do you look at it and how do you determine what it is.

Mr. Nearpass – So, are there just a couple things you could recommend that would make this in-law quarters versus a second dwelling?

Mr. Benedict – I really don't have any suggestions at this point. To me, I look at it to me it's two separate living quarters. To build a new one without a bathroom or kitchen I think you'd be contrary to the building code that you're not providing the four elements that you need for a dwelling space and I don't think it's acceptable to require someone to walk whatever it is – go out a door, through a breezeway into another building just to go to the bathroom or go to the bedroom or anything like that.

Mr. Nearpass – Have you considered other design plans to maybe make this a traditional in-law quarters? I don't think anyone here wants for you and your family to not get together and live together, but have you considered alternative designs to make it jive with the code?

Mr. Swedrock – I don't know that we can. I think we were looking at what we can try to do to meet the codes so we're not here, but I think basically if you made it a fully attached, we'd have to connect and take a wall out of this historic cobblestone building or something to make it fully attached and I don't think we wanted to do that. I think we wanted to try to add the breezeway and try to limit the disturbance to the existing structure, as well as meeting the needs of the family for the future and I know we looked at two or three different alternatives of how we can lay this thing out, but I don't know that there's a clear direction on how we could make this an in-law and still not be a two dwelling unit and still not be here asking for a variance. Unless there's something that I missed in the code.

Chairman Reinhardt – Al, when is a breezeway not a breezeway anymore? Because here's what I'm thinking in my experience that the code if it's not clear it really should be in the favor of applicant. Those are threads of legal theory that it goes against the writer of the instrument. And we're having trouble getting some definitions of breezeways and kitchens and all these elements. And it to be fair to an applicant who's looking at the definitions of the code and direction the code to be put on notice of the what you can and cannot do, there's terms here that's making our heads scratch and we need to be able to put our finger on what are these things on whether we grant them or deny them.

Mr. Benedict – I don't think the code defines the semi attached as to this is what the proposal is. At least this is what I would determine would be semi attached, however the code does not define it. What does that mean? There's other situations where I've just accepted the breezeway between them as being semi attached. Does it mean you couldn't put a garage in between them as being semi-attached?

Chairman Reinhardt – Why isn't it a hallway?

Mr. Benedict – Pardon?

Chairman Reinhardt – It's a hallway between two rooms.

Mr. Benedict – Correct. Yes.

Chairman Reinhardt – I know it's semantics. But, if a breezeway is considered an unheated area that connects what I thought a breezeway is between a garage and a home, generally it's unheated.

Mr. Tovstukha – The intent is to be heated breezeway.

Chairman Reinhardt – So, if it's heated then it turns out to be that it's called a hallway, it's no longer a breezeway. And, it's one unit and therefore it's no longer a duplex, it's one unit with arguably instead of the kitchen being in the basement the finished area, the kitchen is above the garage or second kitchen or you know those four elements. I've been in many finished basements that there's a full bath, there's a separate rooms that are bedrooms, there's a living space that often times in-laws or family comes over that's where they land and a microwave, a full sink. It sure looks like all those four elements, but yet it's not a duplex.

Mr. Benedict – It's one of those situations where I or the zoning board could make a determination as to what this is and where does it fit and because there isn't anything in the code that's clear that gives you guidance that says if you do this, this is what you get; if you do this, this is what you get.

Chairman Reinhardt – So, as a condition, I think to remove the notion it's a duplex I think a duplex gives the indication that it's two separate families. It could be cousins, it could be related, but generally duplexes are two separate families.

Mr. Benedict – The code does define duplex. I could see if I could find that for you. If you have any other further questions, you want to go on to.

Mr. Swedrock – Does the duplex require a fire wall or something? Maybe we could use that to say this isn't going to have a fire wall, so it's not meeting the definition of a duplex? I'm just throwing it out as a way to maybe help the zoning board make a determination on it because this is just going to be a heated hallway between two living areas. Really it's one living area that people are sharing.

Mr. Benedict – That'd be more from the building code standpoint. Town code wouldn't get into that.

Mr. Swedrock – Right.

Chairman Reinhardt – So the hallway that connects, I know it's going to connect the main house, but it connects to . . . the garage?

Mr. Swedrock – (Yes)

Chairman Reinhardt – And from the garage there's a set of stairs that go upstairs to another living space?

Mr. Swedrock – Correct.

Chairman Reinhardt – And if it is possible to from where the hallway connects to the garage instead of going directly to the garage it's an enclosed stairway so it has more of an appearance that it's a hallway to a stairs that go upstairs instead of going directly into the garage. Do you see what I'm trying to drive at? That you're trying to separate, keep the living space all as one connected unit, instead of leaving one living space, going into a garage a nonliving then going up the stairs to a new living space.

Mr. Tovstukha – No, you've got it exactly right. The designs we looked at are basically hallway goes to the staircase where you go upstairs or you can open the door and go into the garage.

Mr. Benedict – And, the definition of a duplex, “ a house having two separate living units, a detached residential building containing two dwelling units designed for occupancy and used exclusively by two families independently of each other. A duplex is a two family dwelling which is designed with a common wall and/or floor.”

Chairman Reinhardt – How does the code describe a family or does it?

Mr. Benedict – I don't believe it does. My understanding due to previous determination in courts, a family can be most anything. You get two totally unrelated people and they declare themselves a family, they are a family.

Chairman Reinhardt – So, a potential condition for this is it's not going to be rented out, correct? To either one, you're not going to rent this unit out? And, it is relation, whether they are by blood or by in-law. And, those are the conditions so it won't fit the nature of what a duplex is. They are not two separate families, it's one family unit. Whether it be by blood or related by law. It's really by blood, if it's an in-law then there's got to be some blood line in there, so it's either your folks or your wife's folks. So it's your wife's folks, right? There's blood line in there.

Mr. Benedict – There's three parts to the duplex definition. Two of them mention family, the first one does not which says “a house having two separate living units.”

Mr. Nearpass – I just sent a text around to everybody's chat if you want to see it.



Chairman Reinhardt – I didn't see it. You have a question?

Mr. Nearpass – No, that was me. I just sent the definition of duplex around by zoom chat to everybody, if you can see it.

Ms. Morley – Al, while they are reading that, can I ask you a question?

Mr. Benedict – Sure.

Ms. Morley – Say in two years, this family moves away, can that be rented out as another unit?

Mr. Benedict – Unless there was something put in a resolution, I don't think the town could control that one way or another.

Chairman Reinhardt – No, not if there's a condition onto the, if it's granted with the condition that it can't be rented out and if I'm hearing what I believe the floor plans to be I'm not hearing that's it's two separate units, it's connected. It's connected as one. You don't leave one living space into a garage, an unlivable space into another. Instead of going downstairs into a basement you're going upstairs to a garage.

Mr. Nearpass – A house having two separate living units, isn't that what this would be? It would be one house, two separate living units, which would be a duplex.

Chairman Reinhardt – How is it separate?

Mr. Nearpass – Two separate living units.

Chairman Reinhardt – If it's all connected as one.

Mr. Nearpass – It's a house, I guess I'm looking at it as a house, a single house. If we're saying it's a single house and it's really just a hallway. A house, having two separate living, it doesn't say two adjoining houses, it says a house, having two separate living units.

Chairman Reinhardt – Why isn't a finished basement with a full bath, two bedrooms, a living space, a full sink, a bar

Mr. Nearpass – It may well be, you may have just blown in your neighbor, I don't know. It may well be, if that one ran by Al, Al, might throw the flag on it, I don't know, but I'm just saying a house.

Chairman Reinhardt – Go through my entire development and I bet you three quarters of them have that. Finished basements with multiple bedrooms, a full bath, a bar, kitchen, microwave, small stove, they are there.

Mr. Nearpass – With a bedroom?

Chairman Reinhardt – Those are not two units.

Mr. Nearpass – It's got the four criteria? It's got the kitchen, the bedroom, the bathroom and the living area, it's got all four of those?

Chairman Reinhardt – Yeah, when you talk of two separate units, I think once you leave one unit whether it be in a garage or outside and go into another unit, now you've got two units.

Mr. Nearpass – That's two houses. Right? So this is saying, a house, a single house having two separate living units. So I would think for example if I took my house and I redid my basement such that it was an egress into and out of, locked and it was separate and you couldn't get into it from my area, that would be two separate living units, right? It would be two kind of fully contained living units under one roof.

Ms. Morley – That's what I would assume, too.

Mr. Nearpass – I owned a two family home that was very much like that. The upstairs, one time the home used to be a single family, they put a door around the stairs that went upstairs and had it locked, so you could go up and down. And, they put in a kitchen, bedroom, bathrooms and it was two separate units in one house.

Chairman Reinhardt – Tenants. One was tenant.

Mr. Nearpass – Yeah, I rented the upstairs and I lived downstairs.

Chairman Reinhardt – These are not tenants.

Mr. Nearpass – I get it, but it was still a duplex. The code doesn't say anything about tenants. It just says a house having two separate living units. It doesn't care.

Chairman Reinhardt – I thought it was two separate families, two separate living units.

Mr. Nearpass – Are all of these ands, and two and three? There's three sections, so number one if you can see what I sent around, number one says "a house having two separate living units. Then there's number two, a detached residential building containing two dwelling units designed for occupancy and used exclusively by two families independently of each other." Or number three and I don't know if these are and or or's, or number three, "a duplex is a two family dwelling which is designed with a common wall and/or floor."

Chairman Reinhardt – Well then the way that I read that certainly two and three are or's. The questions is if it's one and two or three. Now if it's written for interpretation then, one and two go together.

Mr. Nearpass – I'm just wondering if could the applicant take what they've learned from this discussing today and what the code says and try to take another shot at their plans with their designer/developer just to see if it can be made more compliant? I want to agree with the applicant but I tend to agree with Al in that if you kind of look at the overall layout it's, if you want to call it one house, that's fine, but it still has two separate living units.

Chairman Reinhardt – The problem, when you read, rules, regulations, codes, laws, what have you, you have to put the individual on notice on what it is that they are being asked to do. I don't know if we have agreement on if we know what it is, so if we don't know what it is, how do they know what it is and how are they supposed to figure it out what they need to do?

Mr. Nearpass – I think Al's been doing a good job answering it if for us. I know we've been debating it here, but Al's seen this a few times.

Mr. Benedict – At this point with my referral, I guess it's somebody's else's referral, but I guess my thought is we at the building department have made an opinion that says this is two different dwelling units, so it's duplex, call it however you want, if this board wants to make an opinion that we're not correct, I think you have the ability to do that.

Chairman Reinhardt – Even if it's considered two separate units I think one of the conditions certainly needs to be that it can't be rented out and it's only for family.

Mr. Nearpass – Do you think that, I can't remember what they used to call it, but is that overstepping to put those kinds of conditions at on the applicant? Do you think it's too overreaching?

Chairman Reinhardt – I don't. I'm just one vote. I think what the intent of the code is to discourage, prohibit something that should be considered a duplex and it's being disguised as something else. I don't think this is by design the intent is that they are trying to make a duplex out of it. I think they are trying to make an in-law suite. And they are trying to preserve a building, a cobblestone building, without too much destruction to it. So, if the applicant wants and wants to make another crack at it, I'd be open to that, but I'm just one vote on it, though.

Mr. Swedrock – Andrey are you okay with a condition that it would just be for family and you wouldn't be renting it out?

Mr. Tovstukha – Yes, it's just for the family. I just don't know having more time it's going to change anything. We still need the garage and we still need a living space. I just don't see how we can modify it any different than what it is now, so it's really not to put brackets around it, but if this doesn't work then obviously it can't work, period, you know?

Mr. Nearpass – Is it a designated historic home? Maybe that's our anchor then, is it a historic home?

Mr. Tovstukha – It is. It's 1834. (Inaudible) It has a plaque. I don't know if it's designated historic building. But, it is historic.

Mr. Benedict – It has a plaque, it's probably designated. Locally historic. What we call high value to it.

Mr. Nearpass – So we can maybe go down that path then, Mike. To your point, what's unique about this, this is preserving the integrity of the home.

Mr. Salsburg – The original kitchen is no longer adequate, because it's so old?

Mr. Nearpass – I was thinking to really make an addition would destroy a side of the home. It would be much more intrusive than really connecting it via a hallway or den. We all agree it's two different dwellings and that's okay. It's two different families, although everyone is one family, but you have two different families living in there and again we can all say that's okay. But I think maybe what's unique about this is that look it's a historic house, we're trying to preserve the structure, have as minimal impact to it as possible. The applicant's willing to agree to the conditions Mike said, that you're not going to rent it out and it's only going to be to family members living in there and we all feel that that's a condition that doesn't overstep our bounds then I think that's it. At least, I'm okay with it if we all come to a consensus. I think that as a package makes sense.

Chairman Reinhardt – Do I understand it then, as far as the kitchen goes even if there was a bedroom, some type of living space, is not having a kitchen up there that's a deal breaker? When I say a kitchen, a range. If there was a microwave? Again, I've seen even kids bedrooms have microwaves and a little college frigs in there and I don't think they are considered kitchens. It's a place where they store soda and make their microwave popcorn. That's not a kitchen.

Mr. Benedict – I can tell you from the building department standpoint if this was proposed as an addition and they were providing a kitchen, and they just had a little bar sink, a microwave, a dorm style refrigerator that we would consider that as not a kitchen and there's only three elements and therefore it wouldn't be a dwelling unit.

Mr. Nearpass – It'd be a bonus room or a rec area. How does that sound, Andrey?

Mr. Tovstukha – Hold on, my wife is writing some notes. Ideally, you know like sometimes as close as you are with your in-laws or your parents sometimes you want to have a separate. There's too many cooks in the kitchen so to speak. Ideally, we'd like to have all the amenities. I'm fine with having just family. Like I said we're not planning on renting. That's kind of where we are. I realize what you guys discussed regarding the code, it does, it walks like a duck, but it would be difficult to not have a kitchen in that area if you're going to be living there and just go downstairs to get meals or whatever. It just wouldn't probably work as well.

Chairman Reinhardt – Alright, Matt and I have been throwing some ideas around. Sarah, where are you on this?

Ms. Mitchell – I honestly don't know. Because I think the word breezeway is throwing everyone off. I don't like the word duplex, because I don't think it's duplex either. I think it would help if we knew for sure if it was a historic home in Victor. Prior to us making that decision and using that a reason for approval. I don't know if it's possible for Linc to provide us maybe like a mock-up of what this would look like, so we can maybe make a better decision so we know how it's going to be connected and so we know what the layout is going to be. I know that's probably more of a planning board request, but I think with everything that we've thrown out at this point it may help us make our decision a little easier. So, that's just where I'm at at this point.

Chairman Reinhardt – Okay. Good points. Thanks. Donna, what do you think?

Ms. Morley – I feel this the same way, too. I'm a visual person, so if that mock up design was there it would help me to make a decision and like she said with breezeway that term that means kind of open to me and maybe I need to look up the definition of breezeway. I'm with what Sarah's saying.

Mr. Salsburg – If we said that it's okay to build this separate dwelling unit in this house even though it's in an R-1 zone, can we do that?

Chairman Reinhardt – Say that again?

Mr. Salsburg – Can we say it's okay to build this separate dwelling unit in the R-1 zone?

Chairman Reinhardt – Well the term that's throwing me a bit, is when you say a separate dwelling unit. That's where we're stuck on is it a separate dwelling unit or is it connected as one? And, I like Sarah's idea that one, finding out for sure it's a historical home and two, having a clear idea what the floor plans look like to help us figure out is it one unit or is it two? I don't know if that's necessarily going to tip it one way or the other.

Mr. Nearpass – We know from A1, if we call it two houses or one house, currently as proposed, it has all of the amenities of a two family dwelling.

Chairman Reinhardt – Even if that was attached, if the garage was attached, take the breezeway out of it, it's attached and everything else is identical, the living space and A1, you would still call that two units?

Mr. Benedict – Yes, I would. Yes, I would call it two units.

Mr. Salsburg – It would be like having two houses on the lot.

Mr. Benedict – Right.

Chairman Reinhardt – Even if that structure is connected as one?

Mr. Benedict – The way we're looking at it is it's two distinct dwelling units on the same property.

Mr. Salsburg – I think fishing for a clever way to make the situation into one is the wrong approach. If it's our opinion we don't object to this plan, can we approve it? Do we have the authority to override the code on the R1?

Chairman Reinhardt – Override it? No.

Mr. Salsburg – Well that's what we'd be doing if we approved it.

Chairman Reinhardt – In your opinion sure, but I don't think everyone else.

Mr. Salsburg – If you took the kitchen out, but with the kitchen it's two.

Chairman Reinhardt – If I understand it right, if you take anyone of the four elements out, it's not a separate unit, so let's say if it had a kitchen, a full bath and a bedroom, that's not a separate unit.

Mr. Nearpass – We're trying to make it three and a half, I think life would be good, but if not, I think if the applicant really says this is what we've got to have . . . the only thing I can hang my hat on is the preservation of historic building.

Mr. Swedrock – I can tell you, I submitted the SEAF with the application and it's not listed on the national or the state register of historical places. I think more with the historic, we're just trying to preserve the historic character of the building which is a cobblestone building that we want to preserve because it's a neat structure. It's not listed on the national or state register, but I think what we're looking for is if the board is okay with granting a variance to allow us to do this additional dwelling unit with a condition that it won't be rented out, it will just be for family and that it's not the intent to develop this as a duplex. It's a two dwelling unit to be shared by a family.

Chairman Reinhardt – Alright, I'm not sure if we're all on the same page, or if we're ever all going to be on the same page with this thing. I have enough information. Matt, do you have enough information to make a decision tonight?

Mr. Nearpass – I think I do, yes.

Chairman Reinhardt – Fred, do you have enough?

Mr. Salsburg – Yes, I think so.

Chairman Reinhardt – Donna, you have enough information?

Ms. Morley – Yes.

Chairman Reinhardt – Sarah, do you have enough information?

Ms. Mitchell – Yes. If we're sticking with the way it is now, then yes.

Chairman Reinhardt – Okay, so just so I know how to craft the resolution going through the criteria, Matt as it stands right now with the conditions being only for family and not to be rented, would you be inclined to grant the variance?

Mr. Nearpass – Yes, I'd grant as proposed.

Chairman Reinhardt – Fred?

Mr. Salsburg – Yes.

Chairman Reinhardt – Donna.

Ms. Morley – No.

Chairman Reinhardt – Why not?

Ms. Morley – A house having two separate living units is a duplex. If they're not changing the kitchen to have three instead of four main things, then it's a duplex.

Chairman Reinhardt – Then looking at the criteria, where are you having issues with on granting the variance? Of those five criteria, which ones? If we look at an undesirable change would be produced in the character of the neighborhood?

Ms. Morley – No. He's be fine.

Chairman Reinhardt – What about the applicant, can/cannot achieve by some method, feasible for the applicant to pursue?

Ms. Morley – That one he can. It's not a need. They can live with a kitchen with three things.

Chairman Reinhardt – Are you considering this variance substantial?

Ms. Morley – Yes.

Chairman Reinhardt – And, whether the variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood. I don't think we're looking at that.

Ms. Morley – No.

Chairman Reinhardt – Sarah, where are you on this?

Ms. Mitchell – I'd have to agree with Donna. But I will say if they were willing to modify the kitchen to not make it a full kitchen then I would be more on board with it. I think someone threw out the term 3 ½ ?

Mr. Nearpass – So, I think if they made it into 3 ½ Sarah then Al would say they don't need a variance.

Ms. Mitchell – So, that's where I am then, I guess as it's presented the way it is, I would say no for the same reasons that Donna has already given, so I'm in agreement with her there.

Chairman Reinhardt – Let me ask you this Al, if the stove wasn't there and it was a college frig, a sink and a microwave, would you call that a kitchen?

Mr. Benedict – No.

Chairman Reinhardt – Alright and if that was the shape of what that space was like then, it had a full bath, a bedroom, a couch with a tv, microwave, full sink and a college frig, would they need a variance?

Mr. Benedict – As long as that breezeway between the two is heated in connection to the two living spaces, I would say it would not need a variance.

Chairman Reinhardt – So, I think we've got some definitions here. Whether it'd be Andrey or Linc, is that a possibility then for that, we're not going to call it a kitchen, but the 3 ½ if it were college kitchen or there's some other term to use for it, I think the key is there, there's not an oven or a stove there it's just an efficiency space?

An efficiency kitchen.

Chairman Reinhardt – No kitchen, we're not going to use the word kitchen. Is that an option for that space above the garage? If you need time to think about that and kick it around. You certainly can and you can circle back with us?

Mr. Swedrock – I'm still questioning what it's a definition in the code that he's defining that kitchen, but we're telling you we're just using it as a family space, so I guess my question is I mean this is important for this family to be able to share this space in their house and we're trying to do it just for a specific instance which I don't think we're trying to set a precedent here for a duplex or a two family that they are going to rent. It's really literally just for if I went down in my basement and put in a full kitchen right now, like I said, I'm trying to go back to Mike's points earlier of almost anyone could do this in their house and it wouldn't be. To me it's just sort of something in the code that we're trying to deal with the best we can and we're trying to make sure we're up front and honest about putting another kitchen in here and I'm just wondering if this is a precedent thing or is it that you're concerned that he is going to turn around and rent it someday? I think it covers the town with the condition that they're not renting it.



Chairman Reinhardt – There's a few things driving it. The variance is going to run with the land so whether he's there for six months, six years, we can't stop him from selling it, but if or whenever he does that variance is going to travel right along with it and someone may say oh we're going to rent it and we'll just open up a whole can of worms here.

Mr. Salsburg – Well by taking out the stove you're almost forcing the occupants to use a hot plate if you want to fry an egg. That seems kind of, I wouldn't like it if even my mother-in-law was living in there. I think I'd like to see a whole kitchen.

Mr. Swedrock – And, I'm also sort of curious because I think we're going to start seeing this more and more, so I think it's like with everything that's going on and the craziness I think we're going to start seeing this type of a situation more and more that's why I'm kind of curious to see.

Mr. Nearpass – We are seeing more and more are the additions right and again I think this goes back to you can't have the addition because they are trying to preserve the home and call a duck a duck it's going to be a two family dwelling when you're done doing what you're doing and I think maybe it's just more time the board needs to bake on it and think about it or more options, but at the end of the day I feel I guess a little more comfortable then if you weigh the I've got the one approach you make it a 3 ½ and you don't need a variance and you can do what you want. It can be rentable technically, because there's no conditions on any piece of paper. It's a two family dwelling with a studio apartment and an efficiency apartment in it. The other avenue is we can give the applicant what they are asking for, call a duck a duck but be able to have the teeth in the legal document that will run with the land that says it's not a rentable space and it only can be occupied by family members, in-laws or blood relatives. In my opinion, going that approach gives the town a little more flexibility or knowledge going forward – okay it can't be rented. This is what the conditions are, the applicant gets what they want and versus going the 3 ½ route which they'll still end up with a two family dwelling. It won't be called a dwelling because it's only 3 ½, but you'll be able to rent it.

Mr. Salsburg – I think that's the best solution. Not rentable. It's a real kitchen and not rentable.

Mr. Nearpass – Which one, Fred?

Mr. Salsburg – Make it a real kitchen, but you can't rent it.

Mr. Nearpass – Yes, thank you. I was trying to convince the ladies a little bit, I'm not quite sure I did, but I think that's the tradeoff if the applicant is able to make it 3 ½ the town's got no skin in the game after that. There's no legal document that says it can't be rented and if you make it full duplex there's something unique about the site with it being historically cobblestone. Let the applicant pursue what they wanted but have the language in the variance that runs with the land that it can't be rented. That's how I in my mind kind of, because I was more so with the 3 ½ camp for a little bit too. It's a good discussion. Maybe we just all need a little more time to think about it.

Mr. Swedrock – I was just going to ask this, if we're coming back. If our only option is to come back with less than a full bath, does it make sense to vote on it tonight because if I don't have to

come back with a 3 ½ bath or 3 ½ kitchen I mean. If I only come back with a 3 ½ kitchen then I don't need to come back right?

Mr. Nearpass – Correct.

Chairman Reinhardt – How do you want to do this, then Linc. Do you want to think about it? Keep it as proposed?

Mr. Swedrock – Can we straw poll again on where I think I'm at with the vote, if we just vote? Because basically my point is if I have three votes, then we can get the variance, if I don't get the votes, then our other options is not putting in a full kitchen and then I don't need to come back, right?

Mr. Salsburg – They are still coming back with more definition as an option.

Mr. Nearpass – No, if they are able to convince Al that they've got 3 ½ then

Mr. Swedrock – I've got to get site plan, but I don't need to come back for a variance then, right?

Mr. Nearpass – Correct. I think that's a good strategy, Linc.

Chairman Reinhardt – Okay, so Matt, I think I know where you are. Fred?

Mr. Salsburg – I'm an aye.

Chairman Reinhardt – Okay. Donna, you still in the same spot?

Ms. Morley – I don't have any idea at the moment. I'm kind of in the middle of the line.

Chairman Reinhardt – Okay. Sarah?

Ms. Mitchell – I'm with Donna again because Matt does make a very compelling argument as to why we should consider it. I'm still on the fence about it, but Matt does make a very argument.

Chairman Reinhardt – Okay, so to polish it a little bit more, I'm intrigued on the breezeway if it's heated, did we lose somebody?

Ms. Mitchell – You lost me for a brief second, but I'm back.

Chairman Reinhardt – Linc, if I understand this correctly then the breezeway is going to be heated and connected to the stairway that leads to the space above the garage. Right? That is the plan. And, I'll albeit, that it's not a technical historical home, it is and was built in 1834 and disturbing it is an issue. We are also, no attempt to rent it and it's going to be for family only and defined as family as either by blood or by in-laws. With those conditions, I would be inclined for the variance. So with that, there's your straw poll. Is that sufficient information? We can make the resolution proposal now or do you want to think about it?

Mr. Swedrock – We're good with that I think.

Mr. Tovstukha – Yes.

Chairman Reinhardt – Okay, then we'll move forward. The criteria being 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 being the intent is to be used for an in-law suite or family only, whether it be by blood or in-law. It's not to be rented out. This is a historical home built at or about 1834. The connecting area, call it a breezeway will be heated and from the breezeway heated area to the stairway that leads up to the in-law suite. Would anyone like to add anything else to the first criteria?

Mr. Salsburg – How about that the original cobblestone not be disturbed or as little as possible?

Chairman Reinhardt – Well that would be more of a condition we could put that in there, this would be for the criteria, but I thought I mentioned it is a cobblestone building built about 1834, so I'm sure that can be in the first criteria.

Mr. Salsburg – That's fine.

Chairman Reinhardt – Anything else? Second the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. Due to the proposal and the request that's being made that seems to be it's an all or nothing type of proposition. Anyone want to add anything else to the second criteria?

Third that the requested area variance is substantial however the conditions that the applicant is willing to allow namely the intent that this is to be just for in-laws, family or blood. Not to be rented. Also that it is built in 1834 and that breezeway/hallway area will be heated. 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. I think this is all internal and really has nothing to do with the physical or environmental conditions. 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. Again to hit it a little clearer if need be, the conditions being that it's only to be used for family, whether it be in-laws or by blood. Not to be rented. Also that breezeway/hallway area is going to be heated.

Anyone want to add any other conditions to the proposed resolution?

Mr. Nearpass – I'll motion.

Chairman Reinhardt – Second?

Mr. Salsburg – I'll second.

Chairman Reinhardt – Fred seconds. All in favor. (Aye) Opposed. I didn't hear any so, it sounds like it's unanimous. Sarah, do you want to abstain or is that?

Ms. Mitchell – No, I said aye.

Chairman Reinhardt – Very good. Thank you very much.

Mr. Tovstukha – Thank you. Goodnight, sorry to keep you so late.

Mr. Swedrock – Thank you very much.

RESOLUTION:

Andrey Tovstukha, 1135 Willis Hill Road Area variance two-story building addition  
15-Z-2020

At a regular meeting of the Town of Victor Zoning Board of Appeals held on August 17, 2020 the following resolution was adopted:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on August 3, 2020 from Andrey Tovstukha, 1135 Willis Hill Road requesting an area variance to construct a two-story building addition to a single family residence to be used as a second dwelling unit, whereas §211-19A(1)(a) states one single-family detached living unit is permitted per lot;

WHEREAS, said application was referred by Sean McAdoo, 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 August 9, 2020 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; 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 August 17, 2020 at which time no resident(s) 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 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 intent of this addition is to be used for an in-law suite or family only (blood relative or in-law). It is not to be rented out. This is a historical home built in 1834. The connecting area will be heated and open to the stairway that leads to the in-law suite.

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: Due to the nature of this project, the request cannot be altered.

3. The requested area variance is substantial.

Justification: The conditions that the applicant is willing to allow; that the intent is just for in-laws or family and it will not be rented and also that breezeway/hallway area will be heated mitigate that the request is substantial.

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 request is all internal and has nothing to do with the physical or environmental conditions.

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 Mr. Salsburg:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application from Andrey Tovstukha, 1135 Willis Hill Road requesting an area variance for construct a two-story building addition to a single family residence to be used as a second dwelling unit, whereas §211-19A(1)(a) states one single-family detached living unit is permitted per lot; BE APPROVED.

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

1. Per Town of Victor Code §211-8C(5)(a, b) this variance expires if a permit or extension is not granted within one year from the approval of subject variance.
2. This is only to be used for family, whether it be in-laws or by blood.
3. It is not to be rented.
4. The breezeway/hallway area is going to be heated.

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	Aye

Adopted: 5 Ayes, 0 Nays

Chairman Reinhardt – Thank you for your patience. Anything else before the board?

Thank you everyone for your patience. Entertain a motion to dismiss and call it a night.

Ms. Morley – Do we think September 8 we're going to be at the town hall or has no one heard yet?

Chairman Reinhardt – We don't know yet.

Ms. Morley – No problem. Thanks.

Mr. Kahovec – As far as we know, we're still going with zoom for the foreseeable future.

Chairman Reinhardt – Ok very good, have a good night.