

Town of Victor Zoning Board of Appeals August 19, 2019

A regular meeting of the Town of Victor Zoning Board of Appeals was held on Monday, August 19, 2019 at 7:00 P.M. at the Victor Town Hall, 85 East Main Street, Victor, New York, with the following members present:

PRESENT: Michael Reinhardt, Chairman; Mathew Nearpass, Vice-Chairman; Donna Morley; Fred Salsburg, Scott Harter

OTHERS: Peter George, Tectonic Engineering; Jack Sigrist, Architectural Innovations; Allison Johnson, FCP MHC NY Sales; Autumn Lux, Gypsum Mills MHC, LLC; Jared Lusk, Nixon Peabody; Brian Reh, 6831 Colyer Crossing; T. Caleb & Margaret Strong, 7546 Lower Fishers Road; Nina Westra, FCP MHC NY Sales/Gypsum Mills; Keith Wrisley, 6598 Bradhurst Street; Craig Welker, Dorchester Park HOA; Dave Condon, Town Board Liaison; Al Benedict, Town of Victor Code Enforcement Officer; Kim Reese, Secretary

Chairman Mike Reinhardt opened the meeting, the Flag was saluted, and the Pledge of Allegiance was recited.

APPROVAL OF MINUTES:

On a motion by Mr. Mathew Nearpass, seconded by Ms. Donna Morley; RESOLVED that the minutes of August 5, 2019, be approved as submitted:

Mike Reinhardt	Aye
Matt Nearpass	Aye
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Approved: 5 Ayes, 0 Nays

PUBLIC HEARING:

1. BELL ATLANTIC dba VERIZON 23-Z-2019

The applicant is requesting an area variance to §211-47D(1)(a) to allow proposed wireless telecommunications tower at 7385 Willowbrook Road to be located 46' from the property boundary, whereas Code states tower setback from an adjacent property line shall be equal to the tower height plus 20 feet.

Jared Lusk, Nixon Peabody LLP representing Verizon Wireless.

Mr. Lusk – The application is relatively simple. We are proposing to install a small cell micro cell set of two antennas on top of a utility pole behind 7385 Willowbrook Road. The tower is designed to provide coverage in that immediate vicinity, particularly the Exit 45, they call it the Exit 45 area. Anybody that's attempted to get on the Thruway there realizes there's absolutely no coverage. The land around there is primarily Thruway Authority, etc. property. Verizon is proposing to install a utility pole in the rear corner of the building which is right near about here (pointing on map). And it was determined by the code enforcement officer that the project didn't comply with the Town's wireless telecommunications towers

Town of Victor Zoning Board of Appeals, August 19, 2019

law, because it wasn't the height away from the property line plus 20 feet. And this is, respectfully, the Town's wireless telecommunications ordinance contemplates macro cell towers not a small utility pole that are commonly found adjacent to buildings to provide electrical supply, etc. But again it's here, it is only approximately 46 feet. I think if you were to stand on the ground and look at that; if you look at Tab J of the facility you'll notice the photos we've provided there's what I would consider to be a significant hill with trees behind the building that sort of prohibits us from going any closer and behind the towers. If the pole were to fall it would fall on the hill. Again it's in the right place in the property just given what's going on with the site and it's a business. And again, it's no different than any other utility pole providing utility service to a commercial structure. Does anybody have any questions to why we're doing given the area where we need to be and the overall design? It's in the most feasible, practical location on the property to deliver service to that vicinity.

Chairman Reinhardt – Before we ask any questions, Al do you have any comments or thoughts on this?

Mr. Benedict – I guess I would agree that code does not really address the small cells which probably came about more so shortly after code was rewritten. We'll probably be rewriting it again to accommodate those small cells. I do understand the small cells are needed for coverage in smaller areas. They are fairly inconspicuous. I think this board may have even weighed in on some that were on a building in Cobblestone Court complex.

Chairman Reinhardt – The pole location, how plus or minus what a foot, two feet, how close is that to where you think it's going to end up?

Mr. Lusk – The pole itself?

Chairman Reinhardt – Right, right, the pole location you've located it for us, but how? What happens is often times if the board grants a variance we try and make sure that we understand where it is going to go and there's some flex to it by a foot or two. Just to make sure that whether it be in the minutes and it's verified that that pole doesn't end up 35 feet from where you're telling us. I know it's not going to be 35 feet. Within a couple of feet, five feet?

Mr. Lusk – Within in two or three feet, I imagine. They've done construction visits. Again, it's just a standard utility pole that we bury like any utility pole. I suppose if they hit something when they drilled to put it in, a rock, they might move it a foot over so they can get into the ground, but it's no different than I think you'd see with a fence post if you had to move the fence post slightly.

Chairman Reinhardt – Did you have an opportunity to see the County Planning Board comments?

Mr. Lusk – I did, sometime ago, I didn't believe that there were any significant.

Chairman Reinhardt – The one they had was is colocation possible in the case of a micro cell facility?

Mr. Lusk – The answer is of course in the right circumstance. In fact, I have one right, I came before the Town for a site off of Fishers Road, right by the restaurant that's there after you turn the corner by the Microtel. There's a little office complex. Where appropriate and where the landlord will let us go, we can. But the utility poles sometimes we can't get access to somebody's roof. It's the utility pole it's all about height and the building there isn't tall enough to be able to accommodate it. So, where appropriate, yes.

Town of Victor Zoning Board of Appeals, August 19, 2019

Chairman Reinhardt – Ok. Donna, any questions? Matt?

Mr. Nearpass – So, is this just to fill a dead spot, so to speak or is it providing additional capacity to businesses in the area or what's driving the need?

Mr. Lusk – The primary purpose is to provide direct coverage to the 490/90 interchange. If anybody's taken any, like I did recently this weekend, you come on to the entrance ramp from 490 there's a complete dead spot as you get in, it's really designed for that, but it will pick up every other coverage in the area and therefore provide direct coverage in there by indirect capacity relief to the towers serving the area.

Mr. Nearpass – I was just asking to make sure if it was for a particular business or just for customers in general.

Mr. Lusk – It's customers in general primarily on the 490/90 interchange. Lots of customer dropped calls there.

Mr. Nearpass – No further questions for me.

Mr. Harter – I think I understand what you're doing. Is the pole approximately 40 feet high? Is that the approximate height of it?

Mr. Lusk – It's 50 feet tall and will be buried 7 feet in the ground. So, it's technically about 43 feet above ground, but it is a 50 foot pole, of which 7 feet of it are buried.

Mr. Harter – With respect to collocation, I think you indicated you can't locate on someone else's but are you open to others collating on your pole?

Mr. Lusk – I think the answer is yes, if the circumstances. I'm not aware of other companies pursuing microcells to the extent that Verizon is in part of their network. I've never see anyone ask to collate on them, but Verizon I'm sure would accommodate if they could.

Mr. Harter – Is there an understanding amongst the cell providers that they do that for one another or is it not necessarily so?

Mr. Lusk – Yes, where there are towers, there's routinely sharing of collocation spots. It's not an issue where it's appropriate. Their network is not exactly on the same, for example AT&T isn't on the same footprint, so they might need a tower somewhere just a little bit different. It's rare that towers need to be on the same location. They may require it here given the location.

Mr. Harter – I believe we have quite a few that we've given variances for. Near the water tank on High Street. And I seem to recall previous zoning board meetings where we granted variances and there were collocations. I was just curious to know if that was an option for this.

Mr. Lusk – It is. I just haven't seen it in the context of the microcell yet, but again Verizon has been quite out front on that compared to other carriers that may be coming.

Town of Victor Zoning Board of Appeals, August 19, 2019

Mr. Harter – I have no more questions.

Mr. Salsburg – I don't have any questions. It seems like a pretty small impact on the neighborhood.

Chairman Reinhardt – Anyone from the audience want to speak for or against this application?

Enrica Sharpe, Fishers

Ms. Sharpe - I didn't hear it all, but I know that Verizon wants to do a lot of those 5 G things, it's not anything like that, is it? It's not as powerful as that? Because those give off so many; they talk about those boxes and they just give off some much, microwaves or something? That they are very dangerous and I would hope we don't get them in this area. So, I don't know if yours is the same? I know you're not in an area where people are necessarily, but.

Chairman Reinhardt – If you would, could you comment on are there any hazards to whether it's a residential area or people at or about the area where the cell tower is going to be located?

Mr. Lusk – The system is required by the FCC to operate within its standard limits and once that's true, the federal government preempts any further discussion of the wireless. So, it will be operated within federal standards.

Chairman Reinhardt – Ok, so I think it's fair to say that with our current age that cell towers are I hate to say it's a necessary evil, but it's necessary for coverage and in this case it appears as though a dead spot has been located and this is the location that best suits, to solve the problem.

Chairman Reinhardt – Anyone else that wants to speak for or against this application?

OK. And again I think it's fair to say that because of the cell tower and with coverage issues that I think as Al had said, the area variances, it's necessary, we need to do that. But I think there a bit of latitude that we have to look at to get this problem solved. So just take a quick straw poll, Fred you're ok with this?

Mr. Salsburg – Yes, I am.

Mr. Harter – I think it's in a very innocuous location.

Mr. Nearpass – Yes.

Ms. Morley – Yes.

Chairman Reinhardt – I think we're all in agreement. Let's run through the criteria. First 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.

The justification being it is on commercial property. It is tucked away, I suppose from view and it's necessary for coverage for the 490/90 interchange that there were some dead spots, so it's going to resolve that. Does anyone have anything to add for the first criteria?

Town of Victor Zoning Board of Appeals, August 19, 2019

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

As indicated earlier, that this is the location that the pole needs to be located there for the coverage for 490/90 interchange. Anyone want to add anything else to the second criteria?

Third, the requested area variance is substantial. It's sizeable. But, due to the necessity of coverage for cell. It needs to be done. Anyone else want to add anything to the third criteria?

Mr. Harter – That it's a location that is not the 251/96 corridor. It's tucked in on Willowbrook Road between the Thruway and existing buildings so, you'd have to try to find this in order to be visually impacted by it.

Chairman Reinhardt – Ok, agreed, we can add that.

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

I haven't heard anything or read anything in the applicant's exhibits that would have any effect on the physical or environmental conditions.

Anyone else 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.

Anyone want to put any conditions on the proposed variance? Alright, hearing none, entertain a motion to approve the area variance as proposed.

Mr. Harter – So moved.

Chairman Reinhardt - Second?

Mr. Salsburg – I second.

Chairman Reinhardt - Any further discussion. All in favor?

Mr. Lusk – Do you want to do SEQR?

Mr. Harter – Do you want to do SEQR on it?

Mr. Lusk – I think it's not a residential. It's an area variance that's commercial in nature so before you can approve it, I think you need to complete SEQR.

Chairman Reinhardt – We can do that.

Mr. Harter – I'd like to make a motion that this is a Type II SEQR action. Would anyone like to second that motion?

Town of Victor Zoning Board of Appeals, August 19, 2019

Mr. Nearpass – I second it.

Chairman Reinhardt – All right, all in favor?

Aye.

Chairman Reinhardt – Opposed? (None) Carried, so we'll do that, run through the SEQR process and once that's completed we'll be back. Alright?

Mr. Harter – Well when we make a declaration that it's a Type II SEQR action, as we just did that means that

Mr. Lusk – SEQR's not required, but I think it's actually not a Type II because it's commercial.

Mr. Harter – Oh really, I'm sorry. I made an error then.

Mr. Lusk – Yeah, it's commercial in nature. So, you're correct that most set back variances in residential are in fact Type II. So, you're correct 99% percent of the time. Here we have a set-back variance that is not in a residential district or not for residential use. So, I think technically, you need to go through the EAF form and determine whether or not you're going to. I provided you one. I assume the board has had the opportunity to review that EAF form to determine whether or not there are any adverse (inaudible).

Mr. Harter – I apologize Mike, I thought that this was a Type II action. That was my bad.

Mr. Lusk – We provided a short form at Tab G. Again, filled it all out for you. We didn't see any, note any impact of any significant nature.

Chairman Reinhardt – Al, any comments on that?

Mr. Benedict – None. I guess it would be at this point in time, you would go through the SEAF, make sure that the applicant has answered the questions to the best of his ability. If they are reasonably accurate, at the end of that decide if there is an environmental impact or not.

Chairman Reinhardt – Can we do this tonight?

Mr. Benedict – Sure.

Mr. Lusk – I think it's safe, if you've reviewed it, you can say that we reviewed the EAF, we don't find anything adverse impacts and then somebody make a motion for a negative declaration and you would be done.

Chairman Reinhardt – All right then, let's do that. Everyone had an opportunity to review Exhibit G, the EAF form? If so, then a motion for a negative dec on it.

Mr. Harter – So moved.

Chairman Reinhardt – Second?

Town of Victor Zoning Board of Appeals, August 19, 2019

Mr. Nearpass – I'll second it.

Chairman Reinhardt – All in favor? Aye. Opposed? (None) Ok then we have then the negative declaration. So if you are now comfortable, we can press on. So, reviewing then the proposed area variance. We ran through the criteria, I believe. Let's just do it again. Who made the motion? Scott, it was before we did the negative declaration, you still comfortable with making the motion? Alright? Second? Who seconded it? Fred, you still comfortable with it now.

Mr. Salsburg – Yes.

Chairman Reinhardt – Ok, we're all set to go. Any further discussion? All in favor. Aye. Opposed? (None) Carried.

Mr. Lusk – Thank you so much for your time.

Chairman Reinhardt – Thanks so much for your cooperation.

SEQR Resolution: Wireless telecommunications tower at 7385 Willowbrook Road Appl. No. 23-Z-19

A regular meeting of the Town of Victor Zoning Board of Appeals was held on August 19, 2019; and, whereas, an application was received by the Secretary of the Zoning Board of Appeals on June 27, 2019 from Bell Atlantic Mobile Systems of Allentown, Inc. d/b/a Verizon Wireless, 1275 John Street, Suite 100, West Henrietta, NY 14586 seeking a variance to §211-47D(1)(a) to allow proposed wireless telecommunications tower at 7385 Willowbrook Road to be located 46' from the property boundary, whereas Code states tower setback from an adjacent property line shall be equal to the tower height plus 20 feet; and,

WHEREAS, the Town of Victor Zoning Board has reviewed the Unlisted Action on August 19, 2019 and considered Part 1 of the Environmental Assessment form and application materials concerning the Proposed Action, and identified no significant impacts; and,

On a motion by Mr. Harter, seconded by Mr. Nearpass:

DECISION:

NOW, THEREFORE BE IT RESOLVED, that the project, Bell Atlantic d/b/a Verizon Wireless, will not have a significant environmental impact and the Town of Victor Zoning Board of Appeals hereby issues a Negative Declaration; and,

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

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

Approved: 5 Ayes, 0 Nays

Town of Victor Zoning Board of Appeals, August 19, 2019

Resolution: Wireless telecommunications tower at 7385 Willowbrook Road Appl. No. 23-Z-19

At a regular meeting of the Town of Victor Zoning Board of Appeals held on August 19, 2019 the following resolution was adopted:

WHEREAS, an area variance application was received by the Secretary of the Zoning Board of Appeals on June 27, 2019 from Bell Atlantic Mobile Systems of Allentown, Inc. dba Verizon Wireless, 1275 John Street, Suite 100, West Henrietta, NY 14586 to §211-47D(1)(a) to allow proposed wireless telecommunications tower at 7385 Willowbrook Road to be located 46' from the property boundary, whereas Code states tower setback from an adjacent property line shall be equal to the tower height plus 20 feet.

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on July 7, 2019 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, this application is classified as an Unlisted Action under the State Environmental Quality Review Act and therefore requires a Negative Declaration from the Zoning Board of Appeals; and,

WHEREAS, the Ontario County Planning Board assigned the referral as a Class 1, referral no. 155.1-2019, and reviewed it on August 14, 2019 stating it was to be returned to the local board with comments; and,

WHEREAS, a Public Hearing was held on August 19, 2019 at which time 0 residents spoke for/against the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings:

1. An undesirable change would not be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

Justification: It is on commercial property and not very visible. And is necessary for coverage for the 490/90 interchange, where there were some dead spots.

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 the pole location that is necessary for coverage for the 490/90 interchange.

3. The requested area variance is substantial.

Justification: This location is not the 251/96 corridor. The area is not visually impacted due to obscured view. This is necessary for cell coverage.

Town of Victor Zoning Board of Appeals, August 19, 2019

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 was nothing presented that would have any impact on the 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.

NOW, THEREFORE BE IT RESOLVED that the application of 2019 from Bell Atlantic Mobile Systems of Allentown, Inc. dba Verizon Wireless, 1275 John Street, Suite 100, West Henrietta, NY 14586 to allow proposed wireless telecommunications tower at 7385 Willowbrook Road to be located 46' from the property boundary, whereas Code §211-47D(1)(a) to states tower setback from an adjacent property line shall be equal to the tower height plus 20 feet, BE APPROVED:

AND BE IT FURTHER RESOLVED that the following condition is 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.

On a motion by Mr. Harter, seconded by Mr. Salsburg:

DECISION:

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

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

Approved: 5 Ayes, 0 Nays

2. FCP MCH NY SALES LLC – Shed 26-Z-2019

6351 Roberts Drive

Applicant is asking to place a 10 x 20 shed whereas §138-6E lot and set back requirements for manufactured homes state one accessory building not to exceed 144 square feet and 10 feet in height shall be permitted for each manufactured home. The property is zoned Mobile Home and owned by the applicant.

Next is FCP Sales. There's a shed. 10 x 20 shed.

Allison Johnson on behalf of FCP MHC NY Sales.

Autumn Lux, on behalf of Gypsum Mills.

Chairman Reinhardt – Alright, you are looking to place a 10 x 20 shed. In an area where any accessory building shall not exceed 144 square feet, so you're over by 46 square feet.

Town of Victor Zoning Board of Appeals, August 19, 2019

Ms. Johnson – Yes.

Chairman Reinhardt – You gave us the application, there's some diagrams. Why don't you tell us why you need a shed and why it needs to go there? You heard the criteria. We're going to follow the same criteria. So if you can plug in those for us, it would be great.

Ms. Johnson – Sure. So we were interested in placing a 10 x 20 shed in that recent sale home to sell, however the problem is there isn't much space to put a single car garage as a 12 x 24. It's a pretty close area and the neighbor off set has ten feet on his side, so we anticipated a different option to still provide a substantial amount of storage unit for the person who does buy this unit. And, a 10 x 20, we found a beautiful Woodtex shed that meets requirements and would be aesthetically appealing.

Chairman Reinhardt – Take your time. When you're finished, we don't want to interrupt you. If you're all done, we'll ask some questions.

Ms. Johnson – The way we had it set back for the rear, it would be, the rear of the home lot actually dips down in the back, so the usage of the whole lot in itself is already less than what the land lessor would get in a typical lot that is flat. So, if we were to try to squeeze in the 12 x 24 garage they wouldn't have that same space as everyone else does. Typically most people in Gypsum Mills have a garage and a storage shed. This lot is just not big enough to hold both. And, I'm done.

Chairman Reinhardt – Fred, do you have any questions?

Mr. Salsburg – You're sort of assuming that the future owner would not have space enough for their stuff with a 144 square foot storage shed. You need a 200. Anything to base that on?

Ms. Johnson – We really want to make sure that we stick with the formality of most of the homes in Gypsum Mills. I don't know if you are familiar, it's a beautiful property. And, typically, they are going to want to have that amount of storage in excess compared to what they can store in the home. So, I believe that this shed is a good combination between the two being able to have storage; enough extra storage space and be able to utilize the lot that they will be paying for monthly.

Mr. Salsburg – That's all for me.

Mr. Harter – Do I understand the application correctly, you want to put a shed in a vacant lot right now in advance of the house going in?

Ms. Johnson – The house is already there. We have a pending purchase agreement as well.

Mr. Harter – The only question is the size of the shed, is that right?

Ms. Johnson – Correct.

Mr. Harter – And versus other sheds within the neighborhood is this larger than other sheds?

Ms. Johnson – Yes.

Town of Victor Zoning Board of Appeals, August 19, 2019

Mr. Harter – And, it's larger because?

Ms. Johnson – It happens to be the one that we found that was beautiful that we thought would match well. We didn't realize the code it wasn't applicable, however we had already started that purchase price and we already bought the shed and waiting for transport we needed to fill out our building permit and then it was like wait, wait, no, no, that's not appropriate. However majority, every other home has the standard size shed that is allowed by the board.

Mr. Harter – The proposed shed is over the theoretical limit by how much, how many square feet?

Mr. Nearpass – 56 feet.

My question was going to be, you said you already bought it, so that kind of gets to the root cause I think of the whole thing. I'm on Woodtex site and they've got 25 different sizes for every shed they make. I mean you could easily find something that's well within the code. Have you tried to work a deal out with them or have you had any communications with them where they said it's not cancellable or anything, you could show us or prove to us. It just seems like a 10 x 20 in that area does seem to me quite substantial. It's obviously not attached. It's not a garage and does that kind of open up Pandora's box to others that may be in a similar situation wanting these large sheds.

Ms. Johnson – I'm going to do a couple answers. So the first answer was as far as the shed is concerned, can we cancel it? The shed was purchased in a previous sale from a community that was closing in Himrod, so it was a joint purchase, so that is ours already. When I contacted Woodtex, they would transport it. I already paid for the transport cost to relocate it, but obviously needed to get a building permit before, so yes in your answer it is a substantially bigger storage than most however I feel that it would offer a little more storage for a person that isn't going to be able to put a garage there.

Mr. Nearpass – You have any images, on what it looks like, what style it is?

Ms. Johnson – I don't know if it was added in there, but I have some here.

Mr. Nearpass – We'd probably have to add it to the record.

Chairman Reinhardt – We don't have this shed, do we? Let's just take a look. You would email those to us?

Mr. Nearpass – Is there going to be any power run to it?

Ms. Johnson – No power and I believe the foundation Woodtex required just the crusher run.

Mr. Nearpass – You're saying someone who has a purchase offer on the lot.

Ms. Johnson – Is contingent on the shed, that particular shed, size.

Ms. Morley – Do you have the purchase offer?

Ms. Johnson – Do I have the purchase offer? Not with me, no.

Town of Victor Zoning Board of Appeals, August 19, 2019

Mr. Nearpass – I'm ok for now. I'm curious if the public has any comments.

Chairman Reinhardt – Questions? Ok. I have a few. How many homes in the community?

Ms. Johnson – There's 604 pads.

Chairman Reinhardt – How many have garages?

Ms. Johnson – All of them, except for probably 20 have carports.

Chairman Reinhardt – So, let's keep this as specific. You've said this a couple times and we've got some moving targets with me. You said some of them, all of them. And carport is not a garage. A garage has four walls and a roof and cars go in it. A shed, cars usually don't go in sheds, so if we can keep the facts straight on what a shed is, what a garage is, what a car port is. OK? You said earlier that most have garages?

Ms. Johnson – Correct.

Chairman Reinhardt – So, how many have garages, of the 604.

Ms. Johnson – I wouldn't know that off the top of my head.

Chairman Reinhardt – More than 80%

Ms. Johnson – Correct.

Chairman Reinhardt – More than 90%

Ms. Johnson – Correct.

Chairman Reinhardt – More than 95%.

Ms. Johnson – I think that might be your threshold.

Chairman Reinhardt – Ok. The proposed shed is by design is not meant to put a car in.

Ms. Johnson – Correct.

Chairman Reinhardt – And, just by circumstance because you have already purchased the 10 x 20 shed, is why you're in the predicament that you're in now.

Ms. Johnson – Well no. We had plans to bring it there. Little background on this unit. We have a 2019 Champion Atlantic that is a three bedroom, two bath that is currently affixed to the property. We did not purchase it because of the position with a garage. Which normally we do bringing homes to Gypsum Mills, especially.

Chairman Reinhardt – What's the biggest shed that you have in that community?

Town of Victor Zoning Board of Appeals, August 19, 2019

Ms. Johnson – 10 x 12.

Chairman Reinhardt – So, why won't 10 x 12 fit here.

Ms. Johnson – A 10 x 12 would fit here. A 10 x 12 would absolutely fit here, but we had anticipated to be more attractive with extra storage considering the size.

Chairman Reinhardt – Did the purchase agreement include anything regarding extra storage on this parcel?

Ms. Johnson – It was in compliance with approval for the shed. It's a contingency.

Chairman Reinhardt – When did you purchase the 10 x 20 shed?

Ms. Johnson – I'd say back in the end of May.

Chairman Reinhardt – Prior to May and if you didn't make the deal, would you have still looked for a 10 x 20 shed here? Or you would you have put like everyone else a shed that was no more than 144 square feet?

Ms. Johnson – Well at this particular location because the house had sat since September of last year, the biggest concern was storage. So when I came across a 10 x 20 with my recent purchase of another manufactured home, it was like bells, here's more storage. We thought it was going to be a good alternative, if you will. However we did not realize that is not with code. Our supervisor has mentioned, we are the landowners, but when we realized filling out the application that it wasn't in the standards that's allowed. We decided to move forward with the request to have it.

Chairman Reinhardt – OK, what's concerning me enough to ask these questions is what appears to me driving this train here is you've already purchased the shed and it's larger than what the code requires. Other times when people ask for sheds there is circumstances that surround it for example, you may not be able to see the shed from the road because they are on a ten acres and it's guarded with buffers and trees and things like that or there's septic systems that prohibit it to go where the code allows it to go so, those are things that are beyond their control and the landowner can still have a shed, but within reason. This it seems you put the cart before the horse and you have the shed and you want to put it in a spot, but the code is telling you that you need a variance because it's over 144 square feet. I'm not hearing a really good reason other than we already bought it.

Ms. Johnson - I don't think that that's not that we already bought it. The shed came with the purchase, however it's a beautiful shed and we thought well we're already having issues trying to sell this home, why not try to put it there. It's vinyl sided, its got windows, its got a pretty door in the front and then to the side it's got French doors, so that heavier equipment, mowers, and snow blowers can fit.

Chairman Reinhardt – So when I look at the criteria first being that it would or would not produce a change in the character of the neighborhood, right now my view on it is, it would because it's larger than any other shed in that neighborhood. Tell me why I'm not looking at that right? Persuade me. Why isn't it going to change the character of the neighborhood?

Town of Victor Zoning Board of Appeals, August 19, 2019

Ms. Johnson – Well, realistically, I personally I feel that the people that have had these garages and extra storage, their storage units, their storage sheds, the 10x12s that they are allowed to have as well, in addition to their permanent structure of the 1-2 car garage depending on if it can fit in its lot. I personally feel that the purchaser whoever decides to move into our community deserves to have the same if not close to amount of usage of their lot and that includes using their storage, too. It's already unfortunate that they don't have a garage.

Chairman Reinhardt – Those that don't have a garage what's the size of their sheds?

Ms. Johnson – 10x12, however they have carports in addition to their 10x12.

Chairman Reinhardt – Can't put a carport here?

Ms. Johnson – We could add a carport, but this particular sale isn't interested in the carport.

Chairman Reinhardt – Alright. Anything else you want to add before I ask comments from the public? Anyone want to speak for or against this application? OK. Anyone else have any other comments, questions, concerns?

Mr. Nearpass – How close, Al, can it be to the actual structure? It was kind of an eye opener, just kind of google earthing the neighborhood, and to your point every house is 10x12 shed. I mean they are just all over, so it is a significant impact on what's available in the neighborhood. Even looking at the obviously you've got the drawing here, but it just feels like that is going to just, being five feet away from the home, in such a high density neighborhood. It just doesn't feel like it's the right fit, something like that.

Al, is there a distance from the home it needs to be?

Mr. Benedict – Five feet.

Mr. Nearpass – I guess that's my concern. We'll see what the public says. It's a very dense district. Your point everybody's got a 10x12 and I'm not quite sure what's unique about this other than home owners already bought it.

Ms. Johnson – I don't feel that that's why it's just that's offering additional storage. As Gypsum Mills we have two RV lots, but that is not in close structure for our customers to be able to have their belongings safely stored.

Mr. Nearpass – He could put a 10x10 or 10x12 or something to that effect.

Ms. Johnson – I think that that's true. We just thought that as a business decision, a 10x20 would have made this more appealing. So, with a little extra storage.

Mr. Nearpass – Which came first though, the purchase offer contingent on a 10x20 or the 10x20 foot shed before the purchase offer.

Ms. Johnson – No we actually, we've been thinking about something for storage because it's been sitting for months and months and we can't have inventory that's been left uninhabited, so we had already been discussing this, so when the size shed came about with the different purchase, we were like, this might be

Town of Victor Zoning Board of Appeals, August 19, 2019

perfect. This might be exactly what we need for Roberts Drive to have a family to be able to utilize the lot. And because we were already filling out the permit and trying to apply for the variance, the people that were interested had mentioned when they were talking was is the shed going to be here, do we get a shed here? And, we had advised that we are in the middle of a variance. So that's

Mr. Nearpass – You said you had an offer that's contingent on a 10x20 foot shed.

Ms. Johnson – Correct.

Mr. Nearpass – You have the offer with you?

Ms. Johnson – I don't have the offer.

Mr. Nearpass – It would be helpful to have the offer now.

Chairman Reinhardt – Are you interested in seeing it?

Mr. Nearpass – Yeah, I'd be interested in seeing it. Is it truly contingent on a 10x20 foot shed.

Ms. Johnson – Storage Shed. Correct.

Chairman Reinhardt – Donna, you want to see that?

Ms. Morley – I asked for it before. I would like to, yes.

Ms. Johnson – You asked for it before? Oh here.

Chairman Reinhardt – The issue, the question is, is your decision in any way factored into the agreement that they have.

Mr. Salsburg – Is sixty feet a standard width of many of the lots there?

Ms. Johnson – Yes.

Mr. Salsburg – So, it's the depth of 135 that's causing this lack of garage or carport?

Ms. Johnson – So, the garage for this, you could get a one car garage there which is a 12x24 and it's still cutting it really close to the neighbor's side yard. We don't want to cause any neighborly issues with somebody walking around to get and the way that this house is set, there is no rear back door. The rear back door is on the front left of the home. So the person if they did have a garage they'd have to walk around the garage if not have a second exit to the back where they would have to then add another 10x12 shed.

Chairman Reinhardt – You could put a garage on this lot.

Ms. Johnson – They don't want to.

Town of Victor Zoning Board of Appeals, August 19, 2019

Chairman Reinhardt – Alright let me try and ask the question again. It's a yes or no answer. Can you put a garage, the 12x24 garage, on this lot?

Ms. Johnson – Yes, you could fit it. Just fit it.

Chairman Reinhardt – If I understand you correctly, the proposed purchasers don't want it.

Ms. Johnson – No.

Chairman Reinhardt – OK. Any other questions from the board? Scott, do you need to see the purchase agreement?

Mr. Harter – No, I don't think so.

Chairman Reinhardt – Alright. I don't either. I think I've

Mr. Nearpass – Not going to demand it.

Ms. Morley – I'm good without it.

Chairman Reinhardt – The way that at least I see it and I'm going to check in with the board, to fit the criteria for granting the variance is a stretch. I think a lot has to do with you've already purchased it. I understand that the purchase agreement it was offered for a 10x20, but sometimes you have to be careful if you offer something and you can't deliver it, the burden shouldn't be on the Town. It's really on the people who made the deal.

The way that I see it on the first criteria is that you've told us that there are alternatives. There are ways that you can do this. You can put a garage on there. You can put a shed on there, but either you and/or the purchaser want something different and something different that exceeds what the code allows. Potentially it's going to change the character of the neighborhood because there isn't anything that's larger than 144 square feet in that community. It is substantial. As far as is it going to change the environmental conditions of the neighborhood. Probably not. Is this self-created? It is. So that's at least my take on it. We'll go through it in a little more detail. Donna, what do you think about this? So, the criteria when I ran through it, are you pretty much in agreement about this?

Matt? Scott? Fred?

Mr. Harter – I agree with your take, Mike.

Mr. Salsburg – I think there's enough alternatives.

Chairman Reinhardt – Before we really go into any detail, is there anything else you want to add or tell us? I think we're prepared to make a decision. If there's information or documents, anything else you want to show us, we'll certainly give you the opportunity to do so, but I think we have enough here.

Ms. Johnson – I don't think that I have anything else to add besides I think that the purchase of the shed wasn't pre – I think we had the shed to place it and we thought it was going to previously fix a storage

Town of Victor Zoning Board of Appeals, August 19, 2019

issue. Not that we have this sale waiting for it. They are kind of hand in hand. My job is to increase occupancy with sales and what's more appealing is to have a storage unit.

Chairman Reinhardt – I think the answer is going to be the same, if you said I haven't purchased a shed yet, but we want to put in a 10x20 shed I think the answer is going to be the same.

Ms. Johnson – I totally understand.

Chairman Reinhardt – So going through the criteria. First being an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance. One is that there are no other sheds that exceed 144 square feet. That even though it sounds like the homeowner doesn't want it, you can put a garage there and you can put the 10x12 shed on the property. Anyone want to add anything else to the first criteria?

Second, that the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. As indicated by the first criteria, you can put a garage, you can put a shed on there. Anyone want to add anything else to the second criteria?

Third, the requested area variance is substantial. 56 feet beyond what the code requires is considered substantial. Anyone want to add anything else to the third criteria?

Fourth criteria, the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. It's a shed. I haven't heard anything how it would have a negative impact on the physical and environmental conditions. Everyone in agreement with that or want to change anything?

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.

With that I'd entertain a motion to deny the proposed area variance.

Mr. Salsburg – I so move.

Second?

Mr. Nearpass – Second.

Any further discussion? All in favor. Aye. Opposed. (None) Good luck in your future endeavors.

Ms. Johnson – Thanks guys. Have a good night.

Resolution: FCP MCH NY Sales LLC Shed Area Variance Appl. No. 26-Z-19

At a regular meeting of the Town of Victor Zoning Board of Appeals held on August 19, 2019 the following resolution was adopted:

WHEREAS, an area variance application was received by the Secretary of the Zoning Board of Appeals on August 2, 2019 by FCP MCH NY Sales LLC for a 10 x 20 shed at 6351 Roberts Drive whereas §138-6E lot and set back requirements for manufactured homes state one accessory building not to exceed 144 square feet and 10 feet in height shall be permitted for each manufactured home.

Town of Victor Zoning Board of Appeals, August 19, 2019

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on August 11, 2019 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, a Public Hearing was held on August 19, 2019 at which time 0 residents spoke for/against the application; and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act and therefore does not require further action; and

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for a shed for a manufactured home to exceed 144 square feet and 10 feet in height:

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

Justification: There are no other sheds in the Gypsum Mills community that exceed 144 square feet. A garage can be added and a 10 x 12 shed can be placed on the property.

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

Justification: There are alternatives; a one car garage can be added to home and a 10 x 12 shed can be placed on property.

3. The requested area variance is substantial.

Justification: The size of the requested shed is 56 feet beyond what the code allows.

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

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 by Mr. Salsburg, seconded by Mr. Harter:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application from FCP MCH NY Sales LLC for a 10 x 20 shed whereas §138-6E lot and set back requirements for manufactured homes state one accessory building not to exceed 144 square feet and 10 feet in height shall be permitted for each manufactured home, BE DENIED.

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

Michael Reinhardt Aye

Town of Victor Zoning Board of Appeals, August 19, 2019

Mathew Nearpass Aye
Scott Harter Aye
Donna Morley Aye
Fred Salsburg Aye

Approved: 5 Ayes, 0 Nays

3. BRIAN REH – Garage

27-Z-2019

6831 Colyer Crossing

For construction of a garage forward of the front line of the primary structure, whereas §211-31G(2) states no accessory structure shall be forward of the primary building. The property is zoned Residential 2 and owned by the applicant.

Jack Sigrist, Architect
Brian Reh, Landowner

Chairman Reinhardt – So you want to put a shed in, in front of your home? A garage, that's a nice garage you got.

Why don't you give us the overview of what you're asking for and walk us through this and we'll see what we've got.

Mr. Sigrist – Do we have our own graphics? You have the plan we prepared, the blue print.

Chairman Reinhardt – 60 x 30 barn, right?

Mr. Sigrist – Recreational storage shed. Four bays, one for a boat, one for lawn equipment, couple of other cars that need to be stored. They are stored off site, right now. As you can see the property is large compared to the request. I think the shed, garage right now is 370 feet off the cul-de-sac. 200 feet on one side and 170 feet on the other side. The only issue that we have is that it is in front of the house that was built about 6-7 years ago. Anything else we can add?

Chairman Reinhardt – I think those are the big, big factors. The acreage that you have. 370 feet from the cul-de-sac. It's buffered pretty well.

Mr. Sigrist - We have a conservation area that makes us put the garage in a certain area.

Chairman Reinhardt – Is there septic there?

Mr. Reh – No, it's on town sewer.

Chairman Reinhardt – Is there any other place that you could place that 60 x 30 barn without doing some massive cutting into the woods and things like that?

Town of Victor Zoning Board of Appeals, August 19, 2019

Mr. Sigrist – We looked at putting it to the east, but we're in a conservation zone. To the west, we're in a conservation zone and the only other place which is in the back of the house which slopes off and it slopes from left to right or from east to west and is actually a walk out basement at that location.

Chairman Reinhardt – Fair to say then that the topography pretty much limits where this barn could be placed? Is that fair to say?

Mr. Sigrist – Yes.

Mr. Harter – And the conservation easement as well?

Mr. Sigrist – Yes.

Chairman Reinhardt – We usually look to Scott for our lay of the land. See anything that concerns you, Scott? Other places where it could be placed or is this it? This is the place it can go?

Mr. Sigrist – We can place it closer to the road.

Chairman Reinhardt – Let's not to that.

Mr. Harter – I think this is a classic situation where we see the code item come before us and it's a good code item for the residential neighborhoods to the east and to the west of the photograph here, but it doesn't really matter I would say in a case where you have such a large lot protected by the conservation easement and the topography, as you say. I think this is an easy one for me, anyway.

Chairman Reinhardt – As far as if there were a condition on this variance of not removing any buffers, trees; if they die, certainly you take them out, but if you have any intention of removing anything, clearing the lot, clearing the woods, I would imagine that's why you bought the place in the first place. Is that fair to say?

Mr. Reh – We're very partial to having woods, so I think there are three trees we are looking to take down. Just to be able to access it, that's it.

Chairman Reinhardt – Electric?

Mr. Reh – I'd like to have electric, yes.

Chairman Reinhardt – Water?

Mr. Reh – Yes. We're looking at just one hydrant. To have inside for utility sake. That's it.

Chairman Reinhardt – Al, are there any waivers that we need? Sprinkler waivers?

Mr. Benedict – No, it's a residential structure.

Town of Victor Zoning Board of Appeals, August 19, 2019

Chairman Reinhardt – Ok. Any other comments? You want to add.

Mr. Benedict – Nothing at this time.

Chairman Reinhardt – Fred?

Mr. Salsburg – What's to the south of the property line?

Mr. Reh – South of the property line, I own that land as well. It's a parcel that I own. It used to be Rudy Kumpf's property, to the south.

Mr. Salsburg – So, there's nothing on it, it's just natural.

Mr. Reh – All wooded. 100 %. It was a 43 acre parcel, bought in 2012. I had also the next lot over 70 acres, I bought that as well. The Aldridge property. This is really kind of a central location to be able to care for all the property. I have equipment at Ravenwood Golf Course that we bring over to mow, to take care of the fields on the hill.

Mr. Salsburg – Seems pretty simple.

Mr. Harter – Seems pretty low impact.

Chairman Reinhardt – Anyone from the audience want to speak for or against? Hearing none. I think we're all in agreement. This is one of those situations that because of the acreage and the topography and the buffers that are already there.

Running through the criteria, 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. You have conservation zones, you have 370 feet from the cul-de-sac. The topography prohibits, limits where the barn can go. Anyone else want 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. As indicated by the first criteria, the topography, the conservation zones limit where the barn can go. Any other additions to the second criteria?

Third, the requested area variance it's got to be substantial. It's in front of the home. However the comments we can add there's really nowhere else it can go.

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

I didn't hear or see anything and I really like the fact, that the applicant is willing to keep woods and buffers in place. Any other additions on the fourth criteria?

Mr. Harter - No one spoke against this application and we find it to be well buffered and low impact.

Chairman Reinhart – We can do that. Sounds good.

Town of Victor Zoning Board of Appeals, August 19, 2019

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.

Any conditions to this variance? Hearing none. Entertain a motion to approve.

Ms. Morley – I'll make that motion.

Mr. Nearpass – I'll second.

All in favor. Aye. Opposed. (None) Carried. Good luck to you.

Mr. Sigrist – I have a question. This is for Al, because he wrote a letter. Would we have to go to the planning board after this?

Mr. Benedict – That's correct. Due to the size of it. Any accessory structure 1,000 square feet or 15 feet in height, has to go to the planning board for review.

Mr. Sigrist – And the application is due tomorrow?

Mr. Benedict – I'm not sure what the deadline is.

Chairman Reinhardt – Thank you. Thanks for your patience.

Resolution: Reh Area Variance

Appl. No. 27-Z-19

At a regular meeting of the Town of Victor Zoning Board of Appeals held on August 19, 2019 the following resolution was adopted:

WHEREAS, an area variance application was received by the Secretary of the Zoning Board of Appeals on August 9, 2019 from Brian Reh, 6831 Colyer Crossing for construction of a garage forward of the front line of the primary structure, whereas §211-31G(2) states no accessory structure shall be forward of the primary building.

WHEREAS, said application was referred by Alan 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 August 11, 2019 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, a Public Hearing was held on August 19, 2019 at which time 0 residents spoke for/against the application; and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act therefore does not require further action; and,

Town of Victor Zoning Board of Appeals, August 19, 2019

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 of fact for the accessory structure to be allowed forward of the front line of the primary structure:

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: Conservation easements and topography limit the garage placement. The structure will be 370 feet from the cul-de-sac.

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: As indicated in the first criteria, conservation easements and topography limit the garage placement.

3. The requested area variance is substantial.

Justification: The structure is in front of the home.

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

Justification: No one spoke against this application. Applicant is willing to keep woods and buffers in place. It is a low impact.

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 by Ms. Morley, seconded by Mr. Nearpass:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application received by Brian Reh, 6831 Colyer Crossing for construction of a garage forward of the front line of the primary structure, whereas §211-31G(2) states no accessory structure shall be forward of the primary building; BE APPROVED.

AND BE IT FURTHER RESOLVED that the following condition is imposed:

2. 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
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Approved: 5 Ayes, 0 Nays

Town of Victor Zoning Board of Appeals, August 19, 2019

4. T. CALEB STRONG – Storage Structure

28-Z-2019

7546 Lower Fishers Road

For construction of a 30' x 40' storage structure in front of house, whereas §211-31G(2) states no accessory structure shall be forward of the primary building. The property is zoned Limited Development District and owned by the applicant.

Caleb Strong and Wife Margaret Strong

Chairman Reinhardt – You have an application for a 30x40 storage structure and you're on Lower Fishers Road. Give me a moment to pack up that one. Ready? You'd like a storage shed 30x40. You have a similar problem that the accessory structure is forward of your primary building.

Mr. Strong - Why do you need it there?

Chairman Reinhardt – You heard the criteria? We've been walking through this.

Mr. Strong – I really need it for storage. We have quite a bit of acreage. Well over 100 acres. It was always part of our farm. We still work the property some. We have agricultural equipment. I have recreational equipment. Mowers, four wheelers, tractors. All sorts of stuff and I just don't have the storage space we used to. My brother used to have a huge greenhouse complex down the street that he's retired and that's really not there anymore. There is still some of it, but it doesn't belong to him anymore. It's been bought by Bristol's. And I just need storage.

Chairman Reinhardt – All right you heard the process we did with the Reh application. His barn was significantly off the road. You're fifty feet and you have some acreage. So, one of the questions we'll have it why can't you put it some other place behind the home?

Mr. Strong – Behind the home is all wooded. Totally wooded. I'd have to be taking down a lot of trees. Don't really want to plop it in the middle of the woods, plus it would be really not any access because it's very very steep out behind my log cabin. It's quite a steep, steep hill. Very steep.

Chairman Reinhardt – What's your acreage?

Mr. Strong – My house sits on a ten acre parcel. I have another 27 acre parcel behind it. Which borders 490. Then we have quite a bit more acres off Benson, Lower Fishers, that's jointly owned with my brother.

Chairman Reinhardt – Donna, have any questions?

Ms. Morley – Looking at this picture right here, where it says proposed septic system and proposed driveway.

Mr. Strong – It's not proposed that's a septic. This map was from when the house was built in 84. It was proposed back then, but it's been there for 35 years. Not proposed.

Town of Victor Zoning Board of Appeals, August 19, 2019

Ms. Morley – Ok, all that's there. So that's where the well is, that's where the septic is.

Mr. Strong – Correct. Well the well is no longer there, we're on town water, Rochester water. We put water in about 4 years ago.

Ms. Morley – I will be in agreement with him, behind this house is very, very steep. You wouldn't be able to build pretty much anything of that sort on that back property. Pretty much the way the house is set up he would be in front of the house, pretty much in every direction he'd put something. And, I looked at the property.

Mrs. Strong – We actually thought it was the most place that it wouldn't be objectionable to any of the people in that lived in that area. And, also the dead end, we live on a dead end road. The road continues on past our house, but it's an unused road, it's a grass road. It's not even a dirt road.

Mr. Strong - The road really ends before where this (inaudible). It's never been abandoned. It's still actually a road, but you can't get up it. Say, it's not an abandoned road, but it's still a dedicated road, but you can't get up it. The Town doesn't maintain it. Because no one. I'm the only one that owns property on the one side and Benson's own property on the other. Two landowners on two sides and neither one of us care to have it. Because if it was maintained, people would just drive up there and park, throw junk out. The way it used to be. I've lived there all my life right in this area. I've had this property all my life. And, we'd just as soon people couldn't get up there. Because it's a nuisance if they can.

Mr. Nearpass – You know exactly where you want to put it in terms of the 53, 50, the 100, 95. Those distances are accurate. I'm ok with this pretty much for the same reasons as you've heard with the previous application. It's wooded, you have several topographic reasons why you couldn't just place it anywhere else on the property. It does seem quite large from my perspective, it sounds like it would be in front of the planning board, because it's over a 1,000 square feet. How big is the home on the property, from a square footage perspective?

Mr. Strong – 1,800, 1,900.

Mr. Nearpass – It's about the size of the home. It will be quite substantial.

Mrs. Strong – But then we have an attached garage.

Mr. Nearpass – So, you have the three structures.

Mr. Strong – Only 12 feet high, too, whereas the house much higher, it's two stories.

Mr. Nearpass – That's it for me.

Mr. Harter – When was your existing home built?

Mr. Strong – 84

Town of Victor Zoning Board of Appeals, August 19, 2019

Mr. Harter – So, I presume it was built around the time when this map was generated. Which shows a dirt road at that time which looks like it's a dirt road today as well there.

Mr. Strong – It's paved now. Paved up to not quite as far as to where my garage would be.

Mrs. Strong – I have a picture.

Mr. Harter – Then it pretty much terminates thereafter.

Mrs. Strong – It reverts to the grass is probably this high.

Mr. Harter – That's kind of what I see from the aerial photograph that you also put in your package.

Mr. Strong – It dead ends at 490. It used to go all the way up to 96. Back in the day.

Mr. Harter – So I think as Matt was mentioning, I think this is kind of similar to the previous application. The impact is really to you. It's not to your neighbors. You seem ok with it. And I don't think you're creating any type of a visual impact to your neighbors at all because you're literally at the end of the line from what I can tell.

Mrs. Strong – And, we're surrounded by woods everywhere you look.

Mr. Harter – So, I don't see an impact to the neighborhood from what you're doing. I have no questions.

Mr. Salsburg – I think Mr. Harter stated the situation brilliantly. It's like your own dedicated highway driveway that nobody else would have anywhere that I know of. Kind of hard to tell which side the front is. I don't think it will bother anybody.

Mr. Strong - No, I don't think so.

Chairman Reinhardt – Ok. I'm in agreement, generally. With no other traffic going by it would be past your driveway, right? If they go past your driveway, they're lost.

Mr. & Mrs. Strong - A lot of people come up and they turn around and come back down. Because they think that's the way to the mall.

Chairman Reinhardt – So the location, you have a large parcel. You kind of have your pick of the litter if you will, so I'm not going to micromanage that. Anyone from the public want to speak for or against the application?

Hearing none, then

Mr. Strong – I don't have many neighbors.

Town of Victor Zoning Board of Appeals, August 19, 2019

Chairman Reinhardt – We can put that down on the application. 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.

As just pointed out he doesn't have any neighbors. It's a dirt road and arguably it's a dead end. Where the proposed location is really shouldn't affect anybody in the neighborhood. Anyone else want to add anything 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. Factors being wooded, the topography, dead end road. Anyone else want to add anything to the second criteria?

Third, the requested area variance is substantial. It is in front of the home. But, I think the other two, the first and the second criteria outweigh that issue.

Fourth, the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. I haven't heard anything that would give me any concern that there would be any issues with the physical and environmental conditions.

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.

Before I entertain a motion, I just want to get a couple of things square. Electricity? No plumbing? OK. Al any comments, concerns we have before we entertain a motion on this?

Mr. Benedict – Nothing.

Chairman Reinhardt – Anyone want to make a motion for approval for this?

Ms. Morley – Can I ask one question? This says Lower Fishers Road and then it says your address is 425 State Route 444. Do you live at that house or do you rent that house?

Mr. Strong – We built this house in 84. We lived on 444 from before the week before 911 until four years ago. The plan was always to move back here. We have three daughters and we wanted a bigger house when the girls were all teenagers. They've all left the state now and we're back in the log cabin.

Mrs. Strong – We've always owned the house.

Mr. Strong – I rented it for thirteen years or so.

Chairman Reinhardt – This is for 7546 Lower Fishers Road.

Mr. and Mrs. Strong – Correct.

Chairman Reinhardt – All right then. A motion to approve.

Mr. Harter – So moved.

Town of Victor Zoning Board of Appeals, August 19, 2019

Ms. Morley – Second it.

Chairman Reinhardt – Motion carried. Good luck to you. Thanks for your patience.

Mr. and Mrs. Strong – Thank you. Thanks for your time.

Resolution: Strong Area Variance

Appl. No. 28-Z-19

At a regular meeting of the Town of Victor Zoning Board of Appeals held on August 19, 2019 the following resolution was adopted:

WHEREAS, an area variance application was received by the Secretary of the Zoning Board of Appeals on August 1, 2019 from T. Caleb Strong for construction of a 30' x 40' storage structure in front of house, whereas §211-31G(2) states no accessory structure shall be forward of the primary building.

WHEREAS, said application was referred by Alan 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 August 11, 2019 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, a Public Hearing was held on August 19, 2019 at which time 0 residents spoke for/against the application; and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act and therefore does not require further action; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for the accessory structure to be allowed forward of the front line of the primary structure:

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: There are no neighbors near the property. It is a dead end road. The proposed location of the shed shouldn't affect any one in the neighborhood.

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

Justification: The topography and wooded areas limit the shed placement.

3. The requested area variance is substantial.

Justification: The requested shed placement is in front of the home.

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

Town of Victor Zoning Board of Appeals, August 19, 2019

Justification: Nothing presented gives any concerns to the 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 by Mr. Harter, seconded by Ms. Morley,

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

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

Approved: 5 Ayes, 0 Nays

5. MARATHON ENGINEERING, PAUL COLUCCI, ANAC Holdings, LLC 22-Z-2019

Horsepower Motorworks, 1256 Brace Road

Applicant is requesting area variances to §211-24A(9)(b) & §211-24A(9)(c) to construct a motor vehicle repair facility whereas Code states the vehicle repair facility must be 1,000 feet from the residential boundary & 500 feet from a structure of a residential use. Also requested variances to §211-32A(2)(d)[1][a] & §211-32A(2)(d)[2] to allow parking 36 feet from the right-of-way instead of 80 feet per Code and allow a 76 feet parking buffer instead of 100 feet per Code. Also, requested is reduction from 120 parking spaces (six per repair bay) per §211-32B to 92 (4.6 per repair bay).

Chairman Reinhardt - Last order of business is the Marathon Engineering. Al, do you have some comments for us?

Mr. Benedict – My understanding is at this point in time the planning board is declaring themselves to be a lead agency so it's up to this board to decide to allow the planning board to do so. If you do then you become an interested party in which case you still have opportunity to provide input. So probably at this point in time it would be an opportunity for this board to provide suggestions for areas that you'd like to see them examine for environmental impacts.

Chairman Reinhardt – Donna, thoughts, concerns?

Ms. Morley – I don't have any for the moment. I think about that a minute.

Mr. Nearpass – I think the only environmental impact I recall and I think we talked about this one at least twice maybe three times, were sound pressure levels at the property line. I'm ok in favor of that, I just want to make sure that they are reasonable. Again I just want to make sure that we don't give them a bar that if someone mows the lawn, it exceeds it, kind of thing. I think it just needs to be reasonable, but obviously because of the concerns of the neighborhood I think it's necessary. I don't know what the numbers are or should be, but I think if we look through the minutes or what they proposed, I think that there was some reasonable decibel levels that we're recommending.

Town of Victor Zoning Board of Appeals, August 19, 2019

Chairman Reinhardt – All that's happening here is we need a motion for the Town Planning Board to be the lead agency and that's it. We're not going to make a decision today.

Mr. Nearpass – I'm in favor of that.

Mr. Harter – I'm in favor of that, too. I attending the planning board meeting between this meeting and the prior meeting when we talked about Marathon. I mentioned to them that we had seen the application and it was my opinion, that our board and the planning board had similar concerns about the environmental impacts, whether they are neighborhood impacts or whether they are environmental impacts, they are impacts and they are almost identical. One thing that I took away from the planning board meeting that I wanted to share was also on the topic of sound or noise and a number of residents spoke again on that topic and I think in terms of a referral to the planning board and I think they are the right board to do the impact analysis, we saw in the sound report that they had simulated sound that they mimicked from the existing structure. Existing building that they operate at in another location in Victor. And one of the things that came out of the public comment was that they should analyze what the sound output would be under one of these outdoor gatherings that they are proposing to have. I think that kind of rang true in my mind that's really the peak event that they really should model and take a look at and when you're doing a project the way they are doing this, they can then as the applicant and the applicant's engineer take a look at how effective buffering with not only land or earth, but also vegetation. How effective that would be in mitigating that impact. But I think the take away that I had from that board meeting was beyond just the ambient use of the facility as they modeled it from the existing facility, take a look at it under these peak events when there is a potential for loud noises to be emitted, possibly. So that's my take away, but I agree with the lead agency being the planning board. I think that's the way to administer the project.

Chairman Reinhardt – OK, great, Fred?

Mr. Salsburg – Well, did not the engineering company offer to agree that the sound would not be any greater than 96?

Chairman Reinhardt – Sure. All that's happening here is a motion to allow the Town Planning Board to be the lead agency.

Mr. Salsburg – That's fine with me.

Chairman Reinhardt – Once they complete their process, they will come back with their findings and we can continue on and evaluate not only what we have collectively, but also with the Town and planning board has found in the Lead Agency. So, they will take our comments into consideration, but someone's got to be a lead agency and so far it sounds like it does make sense that they do that. Ok with that?

Mr. Salsburg – Oh yeah. If they all put the vehicles in at night, too. I thought was important.

Town of Victor Zoning Board of Appeals, August 19, 2019

Chairman Reinhardt – Before we entertain a motion, anyone from the public want to speak regarding the Town Planning Board being the lead agency. All right then, a motion to approve the Town Planning Board being the lead agency.

Mr. Harter – So moved.

Mr. Nearpass – Second.

Chairman Reinhardt – All in favor. Aye. Opposed (none). Carried.

Before we adjourn. Anything you ladies and gentlemen would like to ask questions?

Keith Wrisley – 6598 Bradhurst.

Mr. Wrisley – I guess I have a question, if I can. I've gone through the same criteria. I've contacted an attorney for what the Town Planning Board or the zoning board has to do. What I can't get my arms around is how this is even going this far given the criteria that the board has to go through in order to approve this. This is a substantial area variance. It's huge.

Chairman Reinhardt – Which variance are you talking about? We heard five today.

Mr. Wrisley – Only for Horsepower Motorpark. That's what I'm here to talk about. Motorworks. I just can't understand how with that substantial of an area variance and while I know that you have the right to look at the fact that they created this difficulty themselves and approve it anyways, there still is the difficulty there. They have created this all of their own. They can go someplace else. They can use what they are using, but they have created the situation themselves. And, there's going to be an impact to the neighborhood. There definitely, you can go without there being an impact to the neighborhood in putting that big a facility on that property across from a hospice house. You can't have it. So, I don't understand how we're going through all of this process to even go to SEQR when the variance doesn't meet the five criteria that the board would look at. That's all I have.

Chairman Reinhardt – Ok, so you have two questions, it sounds like. Two primary questions. Why SEQR process, why is it being looked at and the criteria in itself.

Mr. Wrisley – I understand why the SEQR has to occur, but if the Zoning Board shows that the variances were outside of what was needed, the SEQR wouldn't even be required.

Mr. Harter – Not true.

Mr. Wrisley – Not true? I stand corrected.

Chairman Reinhardt – Ok, the second piece is sometimes residents or people who listen to applications, get hyper-focused on one of the criteria. It's not an all or nothing. So, just because you have five criteria and if one fails, I think what you're looking at is the substantial.

Town of Victor Zoning Board of Appeals, August 19, 2019

Mr. Wrisley – What if four fail?

Chairman Reinhardt – If you don't want to hear the answer then I can't help you.

Mr. Wrisley – No, I'm sorry. Go ahead.

Chairman Reinhardt – Remember at the beginning, I asked. I let you talk and if you're going to interrupt, then I can't help you. So, if you want to hear an answer, I will do my best to explain how the process works. Great. So, it's five criteria and one criteria all by itself doesn't necessarily mean it will kill or deny the variance. It's a weighted process. So you can have two of the criteria, let's say one and two outweigh the third criteria. The board does I think a great job in looking at all the facts, all the elements in evaluating what's going to happen here. There are many time we deny variances. There are many times we grant them. But, I think generally speaking we take a hard look at all the facts and apply them.

Mr. Harter – With respect to SEQR and your question about SEQR because of the size of the project and the thresholds for SEQR, just like the cell tower that was here that I thought was a Type 2 action, with this particular project when it first came in it was my opinion it was a Type 1 action and that kind of went back and forth and it was eventually confirmed by the Town's consultant that it is a Type 1 action and when it is a Type 1 action it's a project of a certain size. It meets certain thresholds. And when those thresholds are tripped and SEQR takes priority. And both we a zoning board and the planning board take a look at what results from that process and then that dovetails in to the five criteria that we have to balance under an area variance which is different than the criteria we look at for a use variance. As I understand a use variance, we have to see that all of those criteria are satisfied, where as an area variance they are five considerations that we have.

Mr. Nearpass – You're also aware it's a commercial/light industrial zoning so if you go and look, I know you've done your homework there's a lot of things that can go there. From bars, restaurants, heliports. We went through the whole list. The applicant's done I think, a good job of trying to mitigate any concerns from the public. Minimize any variances or impacts in communicating what they are going to do (inaudible) but it is a commercial/light industrial district. I mean there are a lot of other things that can go there without a variance.

Mr. Wrisley – Well that's true, but the size of the building.

Mr. Nearpass – The size of the building I don't think is the issue here. The variances have to do with because it's an auto repair facility having to be so many feet from the residents. I don't think the size of the building is in question. It could be a hotel there.

Mr. Wrisley – Correct. But, because they require 1,000 foot setback and there was a reason that originally that law went into effect to have a 1,000 foot back from that type of facility.

Mr. Nearpass – And, that's been debated. I don't know if you've been here, but that's been debated heavily. In this meeting on the intent of the code and what that industry looked like at the time that that code had passed and what they do now indoors, versus outdoors and those kinds of things so I second what Mike was saying. There's been some really good debates over that and they will continue as they go

Town of Victor Zoning Board of Appeals, August 19, 2019

through the process. But, I think both the public and the applicant and the boards have put a lot of comment into it. And there's things that could go there that wouldn't ever have to come in front of this board that I don't think people would be very happy with either. I think this is something that definitely is on the more favorable side than others that are allowed.

Mr. Wrisley – The board is looking at it from a use standpoint not from an area variance.

Mr. Nearpass – No, it's not the use.

Chairman Reinhardt – No that's not true. It's an area variance. We're using the criteria for an area variance.

Mr. Nearpass – It's an allowed use.

Chairman Reinhardt – As Scott pointed out, the criteria for a use variance, it's a different test.

Mr. Wrisley – I read the use variance test.

Chairman Reinhardt – So, what you also could do is if anybody is not happy, whether it be the applicant or resident that's affected by whether it be the granting or denial of an area variance. There are remedies. And, in that case, then I would recommend go see counsel and they could walk you through what those remedies are.

Mr. Nearpass – But, just to clarify. This is an allowed use.

Mr. Wrisley – No, I realize it's an allowed use. It's just that it's a 90% change to the variance to what's required under the setback requirements, it's a 90% change. It's substantial.

Mr. Nearpass – I'm not sure I concur with that.

Chairman Reinhardt – You're looking I think at one of the criteria. Whether or not it's substantial. It is a factor. We're taking that into consideration. There are other factors involved. The other four criteria and looking at how to they balance. How do they weigh against the substantial piece of it? And believe you/me, this is a very difficult decision, we spent a lot of time on it and we're going to do our very best in making the right decision.

Mr. Harter – And, if I were you, given your level of interest in the project and sensitivity and I agree with the Serenity House next door that's certainly the reason I wanted to go to the planning board, I felt very committed to making sure that we didn't do anything out of our realm to do anything less than the best of a review of this project. If I were you as a resident, I would follow the application all the way to the end. I would attend the planning board meetings and the zoning board meetings. And you'll hear exactly what we do and exactly what we consider and likewise with the planning board. You'll hear them go through the environmental impacts and they will listen to you, the public, who know the neighborhood better than they do. And, they will take into consideration everything you say. If the process is done properly, it's a good process.

Town of Victor Zoning Board of Appeals, August 19, 2019

Mr. Wrisley – Well I appreciate your time.

Chairman Reinhardt – And, I do appreciate your time. Thanks for coming.

Enrica Sharp

I've guess I've come to the wrong night, wrong board. I was at the planning board for this project. It's Highline Park in Fishers. And, what he wants, he wants to change it from light industrial to residential, not residential, because what he wants is a PDD. So he's going to do a lot of housing in there and apartments and things like that and with the PDD I know they can have three stories where I always thought Victor only did two stories, but also across the street is the sports center and he does have a PDD and eventually he wants to put in a hotel and all sorts of other buildings, so all this traffic. I don't know, I'm getting, I have a lot of signatures from people in the area when it comes up I guess for the public meeting because we are opposed to this density housing. We'd rather see, they always said it was light industrial and we thought we were in a light industrial corridor and we accepted that part of it. So, if it should come here.

Chairman Reinhardt – We're a zoning board, this is when people are looking for generally area or use variances. It sounds like

Ms. Sharp – That won't come here? For a change?

Chairman Reinhardt – It probably won't.

Mr. Nearpass – Change would be the Town Board.

Chairman Reinhardt – Your avenue is either going to be the town planning board or the town board itself.

Ms. Sharp – I know they are getting it ready to send to the Town Board, so I'll just have to keep tabs on that one then.

Mr. Harter – It would be the Town Board for a zoning change. To a PDD.

Ms. Sharp – Thank you. It was interesting listening to everything tonight, too.

Chairman Reinhardt – Thanks for coming. Thanks for your patience.

Mr. Nearpass – I do have another question for Al, if that's ok.

Chairman Reinhardt – Sure.

Mr. Nearpass – What's the jeep place up here on 96? It's got the red, it used to be a motor...

Mr. Benedict – Victor Jeep. Chrysler Dodge Ram Jeep.

Town of Victor Zoning Board of Appeals, August 19, 2019

Mr. Nearpass – The one with the red roof, they came to us with the variance.

Mr. Benedict – Yes.

Mr. Nearpass – They park those cars three cars into the grass. I don't remember, it could just be my advanced age, but I don't remember them asking to encroach that close to 96. If you drive by there, those cars are deep into the grass towards the road.

Mr. Benedict – I think the planning board allowed them one row on the grass. I'd have to check on that.

Mr. Harter – Didn't we approve a parking area for them?

Mr. Nearpass – We approved some kind of variance to allow.

Mr. Benedict – I was out there last week and actually they were starting moving earth to create that parking area.

Mr. Nearpass – If you say they're good, they're good.

Mr. Benedict – I'll check on it and verify it.

Chairman Reinhardt – Any other business? Motion to adjourn.

Motion to adjourn – Ms. Morley, seconded by Mr. Nearpass. It was unanimously agreed and RESOLVED that the meeting was adjourned at 8:25 PM.