

A regular meeting of the Town of Victor Zoning Board of Appeals was held on September 8, 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; Donna Morley; Fred Salsburg; Sarah Mitchell

NECESSARILY ABSENT: Mathew Nearpass, Vice-Chairman

OTHERS: Clinton O’Leary, 6916 Valentown Road; Suzy Mandrino, Town of Victor; Kim Reese, ZBA secretary

PLEDGE OF ALLEGIANCE

PAST MINUTES:

On motion of Donna Morley, seconded by Fred Salsburg:

RESOLVED, that the minutes of the meetings held on August 3 and August 17, 2020 BE APPROVED.

Adopted: Ayes 4, Nays 0

PUBLIC HEARING:

CLINTON O’LEARY – 16-Z-2020

6916 Valentown Road

Applicant is requesting an area variance for the location of a privacy fence whereas §211-41H indicates fences are not allowed to be erected forward of the front line of the primary building. The property is zoned Residential 2 and owned by the applicant.

Chairman Reinhardt – The day is September 8, 2020. It’s the Zoning Board of Appeals. I’d like to call the meeting to order.

Pledge of Allegiance

Pursuant to we’ve been informed that the Bank of America application will be carried over for the next meeting, as well as the Caldwell. For now, we’re going to put that for the next meeting. So the only application we have is Clinton O’Leary would be the variance for a fence in front of the house. Do we have someone here for the O’Leary application?

Suzy, you don’t see anybody there for O’Leary?

Ms. Mandrino – No, no one is here.

Chairman Reinhardt – Alright, let's see if we can get some things accomplished here. It looks like he would like a fence variance for in front of the house. There is some indication that it's considered slightly in front of the house. And, I'm looking at the survey and just south of the house there appears to be a fence that surrounds the house. So what we don't know is when he says slightly in front of the house, what does slightly mean?

And from what I can see as well is the purpose is to be by the pool, a privacy purpose. It's really not to guard the pool itself. Let's see if we can share some thoughts and let's think about this so Donna, what do you think about this?

Ms. Morley – Does Suzy have something she can pop up where they are saying slightly?

Mr. Salsburg – The slightly term came from Marty I think and his report of a visit where he says the pool is okay and the fence is slightly.

Chairman Reinhardt – I would suggest that if we can communicate to the applicant. Mr. O'Leary, there you are.

Mr. Clinton O'Leary – Yes. I apologize for my tardiness.

Chairman Reinhardt – We were just talking about you, nothing bad. So let me back up a little bit. Have you ever had a variance application before?

Mr. O'Leary – No.

Chairman Reinhardt – I'll go through the drill a little for you. We'll give you a chance to make your presentation. I think you saw on the application, what we're looking for is whether or not the variance would change the character of the neighborhood to the detriment of the neighborhood, whether or not it's substantial, whether or not this can have an environmental impact, whether or not it's self-created. So with that we see, we're probably looking at primarily the survey. You want to put a pool in and put a fence just to the south of the pool, for privacy?

Mr. O'Leary – Right. So there has been a pool in that location before, previous owner, so the house sits back on the property and the pool and the fence are actually to the side in relation to the street. So the pool is actually behind the front line of the house. The fence is right on or slightly (inaudible) I guess that would be the determination when somebody looked at it.

Chairman Reinhardt – What's your time frame for when you want to install the pool and the fence?

Mr. O'Leary – Well that's why I need the variance. The pool I put in under the assumption that the permit we had already is still okay for it. The fence I didn't think that I would need a permit. So that was something that was discovered when the fence was up. I was sent a notice that I was in violation. And I said what are my options. I didn't want to take it down, (inaudible).

Chairman Reinhardt – So we say slightly in front of the house, do you know by how much?

Mr. O'Leary – I would say maybe, because of the angle of the property, to me it doesn't look like it's in front of the house, but a foot, maybe less.

Chairman Reinhardt – You're breaking up a little, you think a foot or less? So if I were to ask you is that fence less than three feet from the front of the house, you have a high degree of confidence saying it is.

Mr. O'Leary – Absolutely. Yes.

Chairman Reinhardt – Donna, do you have any questions?

Ms. Morley – Can they bring that picture back up and is there some way you can show me where that fence is going to go across?

Mr. O'Leary – There's a large tree in the middle of the property and directly to I think it's all of our right, there actually could be an indentation there as to where a pool once was and is, and then right in front of that, I'm on my phone so it's a little small, but that area. Right along the house line. We have an upper level which is where the house is and then there's a little slope and then there's a whole lower section down there and that's where that is.

Ms. Morley – Thank you.

Chairman Reinhardt – Do you have a distance from the right of way to where the fence is?

Mr. O'Leary – Can you define right of way for me?

Chairman Reinhardt – The right of way is from the center of the road to points perpendicular to the road that whatever municipality has will control it and maintain it. So I'm not looking for the measurement from the center of the road, but arguably from where I can see it, on the picture that we're looking at it's the yellow line that's perpendicular to Valentown Road (inaudible) the fence.

Mr. O'Leary – I don't have that information. I don't know the distance from there. But I can tell you it is, if you look at the house line and you go directly across back towards that would be my neighbor's driveway back there. In other words it doesn't follow the road, it follows the house line. If that helps.

Chairman Reinhardt – Well we've had fence questions before. Primarily it's my understanding that the intent of the code for fences that are in excess of two feet and they need to be either at or behind the front line of the house so that there isn't site distance issues for those coming in and out of the driveway.

Mr. O'Leary – Because the fence is on a lower level, the driveway is on the upper level, if that's what you're asking. Then there's no particular issue there.

Chairman Reinhardt – Back to the survey map, it looks like either then that the eastern edge right where the pool is, it says it's 200.32 feet and that's usually from the right of way to the back line of the house. You see where I'm looking at?

Mr. O'Leary – I'm not following you exactly.

Chairman Reinhardt – The depth of the property, do you know how deep your property is?

Mr. O'Leary – Not off hand, I'm trying to read the map, but I'm on my phone so, looks like 200 feet.

Chairman Reinhardt – So, what we're trying to figure out here is how far back from the right of way line where your property is measured from near the road, going back. It's not 200 feet, because your property looks like to be about 200 feet, so it's something less than 200 feet, but what we don't have is any measurements from the right of way to your house or really to any point that we can approximate where you want that fence, or where the fence is, not where you want it to be.

Mr. O'Leary – I would have to eye ball it and say it's maybe half way, basically where the house is, so but I don't have any measurements that I've personally taken.

Chairman Reinhardt – Let's circle around and maybe it will come back to that issue. Fred, do you have any questions?

Mr. Salsburg – Is the fence existing?

Mr. O'Leary – Yes.

Mr. Salsburg – What type of a fence is it?

Mr. O'Leary – It's a wooden fence and the slats are horizontal, so it has a bit of a craftsman look to it, I guess.

Mr. Salsburg – Five feet high?

Mr. O'Leary – It's six feet high.

Mr. Salsburg – And that goes from east of the driveway some few feet and it has a length of maybe 20-30 feet? Is it shown on the drawing? It stops before the lot line?

Mr. O'Leary – Right. It's about 50 feet long, but it's down again there's a little knoll that goes down from the driveway and then it stops well before the property line. I would say maybe 10 feet before the end of the property line?

Mr. Salsburg – So, that's why there's some questions about is it in front or even with the house because of that elevation difference, it's hard to tell?

Mr. O'Leary – It's possible.

Mr. Salsburg – I guess I think that this is close enough so that I don't have a problem with it. I'm all set here.

Chairman Reinhardt – Okay. Sarah, do you have any questions?

Ms. Mitchell – Mr. O’Leary, I was out at your house today and is it the fence that is currently there now?

Mr. O’Leary – That’s correct.

Ms. Mitchell – Okay, so there is a little bit of damage to that fence, will that be fixed?

Mr. O’Leary – Yes, I noticed that pulling in today. So, we’ll fix that.

Ms. Mitchell – My feedback is one, I think he is asking for a very small request here. If it is in fact less than a foot and that’s what it appeared to be when I was there. I think it was not substantial whatsoever. I don’t think from leaving his driveway out into Valentown Road, it’s going to prohibit anyone from seeing either direction because the fence does sit back far enough. So I don’t think there’s a safety concern here. I would say moving forward obviously you have to get a permit for any building things that you’re doing at your house, but I really from the way it’s presented now I don’t have any issues with where the fence is as long as the damage is fixed and I would be ready to move forward. That’s all I have.

Chairman Reinhardt – Great. So let’s get back to trying to figure out the distance, the fence to the edge of the road or what I’m calling the right of way. So, Mr. O’Leary do you think that that distance is more than 50 feet?

Mr. O’Leary – Yes.

Chairman Reinhardt – More than 75 feet?

Mr. O’Leary – Yes.

Chairman Reinhardt – I think that’s sufficient. I don’t think there’s any reason to pin it down if it’s more than 75 feet, I think it’s six or half a dozen another, but it’s multiple car lengths and Sarah’s point is well taken and I agree that that fence should be repaired as a condition to the variance and I agree that at least trying to eyeball it that’s not going to do any good to go out there and measure is it an inch, is it 6 inches. I think we’re all in agreement that it’s a foot plus or minus a few inches. So let’s just circle around real quick. Donna, do you have anything you want to add or comment on?

Ms. Morley – Nope. All my questions were answered. Thank you.

Mr. Salsburg – I don’t have any questions.

Chairman Reinhardt – So, let’s go 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 that it is a privacy fence for the pool. It is more than 75 feet from the right of way. It is a wooden fence, six feet high, approximately 50 feet in length and there is some damage to the fence, however the applicant is willing to repair the fence as a condition to the area variance. Would anyone else 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.

In this case, the fence has already been constructed so to move the fence I think would create a hardship especially since the fence appears to be a foot or less from the front of the house, so the issue seems to be de minimis. Again, the fence is already up. Would anyone else like to add anything else to the second criteria?

Third, the requested area variance is not substantial. We're looking at it's a foot or less in front of the house. It is a privacy fence. It doesn't appear to be obstructing any line of sight issues for the driveway and/or for the main thoroughfare. It appears to be more than 75 feet from the main thoroughfare. Would anyone like to add anything else to the third criteria?

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

This is a privacy fence. I didn't hear or see anything that would have any kind of effect on the physical or environmental conditions in the neighborhood. Would anyone else like to add anything else to the fourth criteria?

Fifth criteria, 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.

The only condition that we have here is that the fence shall be repaired in a timely manner as a condition to the variance.

Would anyone else like to add anything else to the criteria and/or the conditions to the variance?

That being said, I would entertain a motion for approval.

Ms. Mitchell – I'll make the motion.

Chairman Reinhardt – Second is by Fred, thank you Fred.

All in favor. Aye. Opposed? (None) Carried.

Thank you Mr. O'Leary for your patience. Good luck.

Mr. O'Leary – Thank you very much. I appreciate it.

Chairman Reinhardt – Great. Have a great day. Anything else to come before the board? Very good. Thank you for your time and effort. See you in a couple of weeks.

The meeting adjourned at 7:29pm.