

A regular meeting of the Village of Victor Zoning Board of Appeals (ZBA) was held on Wednesday, June 19, 2019 at the Village Hall, 60 East Main Street.

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

OTHERS PRESENT: Nicholas Cretekos, Doug Scarson, Mike Crowley

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

Salute to the Flag

Resolution #04-19ZBA

Acceptance of Minutes

On a motion made by Tim Stone, seconded by Brendon Crossing, the following resolution was ADOPTED 5 AYES 0 NAYS

Resolved to accept the minutes dated May 15, 2019.

~Continuation~

265 West Main Street/Cretekos Properties LLC

Area Variance Sign

Chairperson Sanderson stated that this case was sent to the Ontario County Planning Board for their review and that their referral recommendation is denial. Mr. Sanderson explained that a super majority vote is needed in order for the variance to be granted, which means that 4 aye votes are needed. Mr. Sanderson read the Ontario County comments into the record:

"There is an 8.5' tall, 5' wide pre-existing nonconforming ground sign on the property that exceed the allowable maximum size of 16 SF. The current sign advertises two businesses in separate buildings under common ownership. The sign is located by the shared driveway. A new owner will be taking over one of the businesses and changing the name.

The proposed sign panel would be 25 SF, replacing a portion of the existing sign. No information is provided about existing or proposed wall or window signage.

The Village code allows the following signs in business districts such as the Gateway Corridor district:

1. One wall sign per occupant with a maximum sign size of .5 SF per linear foot of building fronting street or parking lot but not more than 30 SF.
2. One ground or monument sign near the primary entrance with a maximum height of 5' and a maximum size of 16 SF.
3. Window and door signage not exceeding 30 percent of window area.

4. Use of flags, balloons, banners, or other attention getting devices shall be limited to 30 day period per calendar year.

5. One portable sign per parcel displayed during business hours.

6. Multiple building complexes may also have a single sided directory sign with 1 SF per tenant.

Additionally, the sign code requires any nonconforming sign to conform to the revised standards within one year of its passage in 2008.

Policy AR-7B: Signs the County Planning Board has long taken an interest in supporting local efforts to limit excessive signage. The Board has identified SR 5/US 20 as a primary travel corridor for tourists visiting Ontario County: The intent is to protect the character of development along these corridors by encouraging local boards to adhere to their adopted laws as much as possible. A. All applications for signs located on property adjoining primary travel corridors that do not comply with local limits on size and or number. **Final classification: Class 2**

Findings: 1. the proposed sign is on land along a corridor identified by the Board as being a primary travel corridor for tourists visiting Ontario County. 2. Protection of the community character along these corridors is an issue of countywide importance. 3. Local legislators have standards for signage that allows for business identification sufficient to safely direct customers onto the specified site. 4. It is the position of this Board that the proposed signage is excessive. 5. Excessive signage has a negative impact on community character. **Final Recommendation – Denial.**

Comments

1. The referring body should grant the minimum variance necessary.

2. What is the SF of the existing sign?

3. Is the area of the 3rd panel with black letters on white background part of the existing sign or does it require an area variance as a temporary sign?"

Mr. Cretekos asked if they are referring to the marquee part of the sign. Mr. Sanderson stated that it is exactly what the County is referring to.

Mr. Sanderson explained to Mr. Cretekos that the sign code changed and each business had a year to get their signs into compliance and the reason that you are here now is because the business is changing from Cretekos Diner to Mac's Philly Steaks Diner in which a permit was required and this sign was denied by Code Enforcement. Mr. Sanderson stated that the dimensions of the sign would not change, just the content of the sign. Mr. Cretekos agreed and stated that it is maintenance and that he didn't know that the sign ordinance had changed and that he does not remember getting a letter but that he gets a lot of stuff. Mr. Cretekos stated that had he known that the Village was doing something like that he would have spoken up. Mr. Cretekos stated that he doesn't agree that the Village should have a set-in-stone universal sign ordinance for the whole Village because the gateway district has nothing to do with the Village. Mr. Cretekos stated that the gateway district is not the same as the Village and they are not treated the same, the lots are bigger and there is more traffic so they need a visible sign.

Mr. Sanderson stated that Cretekos Diner was built in 1993 and Papa Jack's in 2004 and the two properties were one. Mr. Cretekos stated that the hardship was not caused by him but that the Village decided to allow fast food which caused the owner of the old Papa Jacks to sell to Dunkin Donuts. Mr. Cretekos explained that Papa Jacks had to find somewhere to go so he came up with the idea of building the new Papa Jacks where it sits today and that the Village was very helpful to guide them. Mr. Cretekos stated that

15 years ago the Planning Board approved adding Papa Jacks sign to the top of the Cretekos Diner sign. Mr. Cretekos stated that he never had a complaint about the sign and nobody has ever hit the sign or gotten into an accident because of it. Mr. Cretekos explained that the sign is kind of a Village landmark because if you ask anybody where Papa Jacks is they know where it is heading into the Village. Mr. Cretekos stated that Turner Automotive used to be the landmark of Victor but now it is pretty much Papa Jacks coming into Town. Mr. Cretekos stated that the sign is also a community sign and that the marquee very seldom advertises anything to do with the business but is basically a community bulletin board.

Mr. Sanderson stated that at one time it was all one lot which is why the sign sits where it is which makes sense that it is next to the entrance because it was all one lot. Mr. Cretekos stated that it wouldn't make sense to put another sign on the Macs Philly Steaks Diner lot as it would not be near the driveway and a tree would probably have to come down which would cost \$4,000 to \$5,000 and another sign would be another \$3,000-\$4,000.

Mr. Sanderson stated that at the time the sign was put up it was all approved. Mr. Cretekos stated that it was approved and when all of this came up recently he was blindsided. Mr. Sanderson stated that the good news is that Mr. Cretekos is doing the right thing and we appreciate that you are running a business in Victor and that the sign has been there for years but since the sign code did change, so a variance is needed.

Mr. Crossing stated that he would like to revisit code 130-6b 'unrelated signs' which says "Business use signs must advertise a bona fide business conducted on the premises where the sign is located unless authorized by a special use permit." Mr. Crossing stated that this is a prohibited sign. Mr. Chalupa stated that it would be considered a Planning Board issue. Mr. Cretekos stated that when the lot was split into two that the sign would remain where it is. Mr. Cretekos stated that by code he could put up two or three more buildings on the property and a half a dozen businesses but where would those signs go? Mr. Cretekos explained that he wouldn't be able to put 6 signs up so a marquee makes more sense. Mr. Crossing stated that it was one parcel at that time but now it is two. Mr. Cretekos stated that he owns both parcels and hopes that if he sells one of the properties that it can be written into the deed that the entrance and sign is to remain shared. Mr. Chalupa stated that a future owner could cut the driveway in half if he wanted to. Mr. Sanderson stated that the fact that Mr. Cretekos owns both properties makes this case unique. Mr. Cretekos stated that he never thought he would have to sell the restaurant. Mr. Stone asked about the contract with the new owner of the diner. Mr. Cretekos stated that the new owner, Mr. MacNamara, is leasing the diner but has the option to purchase it in 2-4 years and the possibility of buying the ice cream shop if it goes up for sale. Mr. Cretekos stated that Mr. MacNamara would like to eventually own both properties. Mr. Cretekos stated that he is not ready to sell the ice cream shop now but maybe in 10 years. Mr. Cretekos

explained that business is not what it once was and if you look around there are more empty buildings than occupied and that even talking about a potential new sign makes him physically ill.

Mr. Sanderson stated that a special use permit states that "Applicants must, wherever feasible, share a single ground sign with all other businesses which are similarly situated. Wherever feasible, applicants shall utilize existing signs." Mr. Sanderson stated that this case is unique because it is on the main drag and this is two businesses with one sign with a shared driveway and a special use permit is often associated with businesses that are off of the main drag. Mr. Sanderson stated that the special use permit states "signs shall be no more than six feet in height, except that signs previously existing will be allowed to maintain their current height." Mr. Sanderson stated that the code is giving mixed messages as far as what they want and what they don't want.

Mr. Cretekos stated that the current sign doesn't cause any sight issues to block traffic. Mr. Crossing asked what the square footage is of the existing sign. Mr. Stone stated that it is 42.5 sq. ft. where the code is 16 sq. ft. Mr. Chalupa stated that it doesn't account for the circle on the top of the sign. Mr. Crossing stated that it is 8.5' tall by 5' wide but wants the square footage of the signage. Mr. Stone stated that he measured from outside post to post. Mr. Cretekos asked if it would be 32 sq. ft. for 2 signs. Mr. Crossing stated that it will be discussed in the balancing tests.

Mr. Sanderson stated that he would like to go over the balancing test questions that are on the application.

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

Yes (Tim, Dave, Brendon), No (Brian, Sean)

Mr. Cretekos stated that there is nothing he can think of and that he can't borrow any more money and had to sell the restaurant to get through day by day and hoping that they don't have to get jobs when the ice cream place closes in the fall. Mr. Cretekos explained that he'd love to do a lot of things to the property such as paving the parking lot but they are broke. Mr. Crossing stated that it is an important consideration. Mr. Cretekos stated that he added a bathroom to the ice cream shop because he sold the restaurant and needed one there so he is building it himself. Mr. Crossing asked what the cost would be for a new sign. Mr. Cretekos stated that he doesn't know for sure because when the sign was built he traded catering for the sign but estimates \$4,000-\$5,000.

Discussion amongst board and Mr. Cretekos of options for bringing the sign closer to code

Mr. Sanderson stated that he doesn't think that the benefit can be achieved by other feasible means. Mr. Crossing stated that he disagrees with Mr. Sanderson and that it

can be achieved by other feasible means. Mr. Pancoast stated that it is not whether it is feasible to the Zoning Board but whether it is feasible to the applicant and it isn't. Mr. Sanderson stated that the Village really wants to minimize signs and clutter along roadways. Mr. Pancoast stated that the County and Town are pushing shared access because they don't want a lot of driveways coming out onto Rt. 96 and that we are not doing businesses any favors by pushing shared access and not revisiting the sign ordinance. Mr. Pancoast explained that with having two businesses with a shared driveway it makes more sense to have one sign at the entrance.

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

No-unanimous

Mr. Pancoast stated that the sign has been there for 15 years so it will not change the character of the neighborhood. Mr. Cretekos stated that the sign was approved and then the Village decided to change the sign code but that the character of the gateway is different than that of the Village. Mr. Chalupa stated that Mr. Cretekos is in the Village. Mr. Cretekos stated that geographically he is in the Village but is not treated the same. Mr. Cretekos explained that he has been there for 26 years and has screamed for years to get Christmas decorations and he does not get flower pots either. Mr. Cretekos stated that the concrete bricks in front of his diner are neglected and compares his location to the stepchild of the Village as they are not part of wine walks and special events. Mr. Cretekos stated that he is still mad about having to compete with Dunkin Donuts and Tim Hortons which have literally cost him millions of dollars and have destroyed his business.

Mr. Pancoast asked if that location was once considered the gateway overlay district. Mr. Crowley stated that he may be thinking of a term that the Architectural Preservation Review Board used. Mr. Crowley explained that it has been referred to as the gateway district since 2001 and in the new code it is a different district from the downtown business district.

Mr. Crowley stated that he was part of the Zoning Board for 16 years and that the way that this Zoning Board approaches things is really up to date as far as detail and research but thinks there needs to be a little bit of flexibility. Mr. Crowley stated that the Zoning Board is charged with whether this sign gets a variance for its current size, a new pre-determined size or doesn't get a variance. Mr. Crowley stated that in 2018 the code was revised because the old code was written in the late 1960's and amended so many times that it needed to be rewritten. Mr. Crowley stated that if the diner was to be torn down and turned into a Doctor's office that he would fully expect the sign to adhere to the new code but that it was not the intent to hurt long-time business owners who may be out of compliance.

Mr. Crossing asked Mr. Crowley why each business owner was given a year to comply and if they didn't that there would be a \$250 a day fine or jail if the intent wasn't to harm the business owners. Mr. Crowley compared the code to the speed limit and

explained that if a vehicle is traveling 1 mph over the speed limit it is illegal but that nobody gets a ticket for going 1 mph over the speed limit. Mr. Crowley stated that the police could write a ticket, the prosecutor could enforce it and the judge could sentence it but it doesn't happen. Mr. Crowley stated that the law is written that way because you have to have a starting point. Mr. Crowley stated that the starting point for the new sign code, right, wrong or indifferent is 16 sq. ft. and the law says that the ramifications must be noted. Mr. Crossing stated that he is not sure that this analogy applies. Mr. Crowley explained that the unique characteristics of each property must be taken into consideration. Mr. Crowley stated that the worst case scenario is that the current sign remains. Mr. Crowley stated that before the sign code was revised, public notices went out for community input and no input was given. Mr. Crowley stated that public notices also went out regarding Mr. Cretekos sign and nobody came to speak for or against the sign. Mr. Crowley stated that it is your charge as a board to see that the community doesn't care about the sign. Mr. Crowley stated that nobody has complained about the sign in 15 years and nobody came to the meeting so it makes practical sense to grant the variance.

Discussion amongst board about putting stipulations on the variance and alternate sign ideas

Mr. Sanderson stated that he would like to skip to #5 of the balancing test

5. WAS THE ALLEGED DIFFICULTY SELF-CREATED?

No-unanimous

Mr. Pancoast stated he always feels that the difficulty is self-created except for this case as the code changed on the applicant so it is not his fault.

Discussion amongst board about previous Planning Board approval

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

No-unanimous

3. IS THE REQUESTED VARIANCE SUBSTANTIAL?

Yes-unanimous

Mr. Stone stated that requested variance is substantial because the sign promotes two businesses and is well over 16 sq. ft.

Mr. Pancoast stated that the deviation from the code is substantial.

Mr. Sanderson asked if there is a way to manipulate the sign to get the sign closer to code.

Discussion amongst board and applicant to brainstorm ways to manipulate the sign

Mr. Sanderson stated that he doesn't have a problem with the sign the way it stands and that the task of the Zoning Board is to take into consideration the benefit of the

applicant and weigh that to the detriment of the neighborhood and he would be comfortable making a motion to grant the variance.

Discussion amongst board to proper wording of the variance

Resolution #05-19ZBA

265 West Main Street/Cretekos Properties LLC

Area Variance Sign

On a motion made by Sean Sanderson, seconded by Brian Pancoast, the following resolution was ADOPTED 4 AYES 1 NAY (David Chalupa)

To grant an area variance to the Village of Victor Zoning Code to allow the pre-existing, non-conforming sign in its current location with the exact dimensions as illustrated in Exhibit A and for those dimensions to be verified by Code Enforcement within the next 10 days.

WHEREAS, an application was received by Roseanne Turner-Adams, Zoning Clerk, for the Zoning Board of Appeals, from Nicholas Cretekos; on April 12, 2019, requesting an area variance to the Village of Victor Zoning Code section 130-5 B 2 (b) to allow the modification of a pre-existing non-conforming ground sign measuring 5' wide by 8.5' tall and exceeding 16 sf of advertising space.

WHEREAS, said application was denied by the Code Enforcement Officer for the Village of Victor on the basis of Section 130-5.B (2) (b); and,

WHEREAS, the Zoning Board of Appeals has determined this application to be a Type II Action pursuant to Section 8 of the New York State Environmental Quality Review Act Regulations, and as a Type II Action, no further review under SEQR was required; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on April 19, 2019; and,

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

WHEREAS, a Public Hearing was held on May 15, 2019 at which time all those who desired to be heard were heard and 0 persons spoke in favor of the application and 0 persons spoke against the application; and,

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

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

- That an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by the granting of this variance.
- That the requested variance is substantial.
- That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- That the alleged difficulty was not self-created.

NOW, THEREFORE BE IT RESOLVED that the application Nicholas Cretekos/ Cretekos Properties LLC an area variance to the Village of Victor Zoning Code to allow the pre-existing, non-conforming sign in its current location with the exact dimensions as illustrated in Exhibit A and for those dimensions to be verified by Code Enforcement within the next 10 days.

Be It Further Resolved:

That the applicant obtains the proper building permit(s) from the Building Department.

ADJOURNMENT

Meeting was adjourned on motion at 8:42 pm.

Roseanne Turner-Adams, Minutes Clerk