

**A regular meeting of the Village of Victor Zoning Board of Appeals (ZBA) was held on Wednesday, August 21, 2019 at the Village Hall, 60 East Main Street.**

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

**MEMBERS ABSENT:** Chairperson Sean Sanderson

**OTHERS PRESENT:** Doug Scarson, Leonard Muscarella, Regina Muscarella, Mark Button, Greg Welch, Jason Jensen, Michael Jensen

The ZBA meeting was called to order by Vice Chairperson Brian Pancoast at 7:00 pm.

Salute to the Flag

**Resolution #06-19ZBA**

**Acceptance of Minutes**

On a motion made by Brendon Crossing, seconded by Tim Stone, the following resolution was ADOPTED 4 AYES 0 NAYS

**Resolved** to accept the minutes dated June 19, 2019.

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**165 Maple Ave./Regina Muscarella**

**Area Variance Garage Addition**

Vice Chairperson Pancoast read the legal notice into the record:

A public hearing will be held before the Village of Victor Zoning Board of Appeals on Wednesday, August 21, 2019, at 7:00 p.m., in the Village Hall, 60 East Main Street, Victor, New York, to consider:

1.) The application of 165 Maple Ave./Regina Muscarella, for an area variance to the Village of Victor Zoning Code section 170-7 & 170-10(d) to allow the extension of a garage in an R-1 district that currently has no setbacks where a minimum of a 10' setback is required. In addition when the new square footage is added to the existing parcel the required 25% coverage for compliance is exceeded.

Sean Sanderson, Chairperson  
Village of Victor Zoning Board of Appeals

Vice Chairperson Pancoast then read the letter of referral from Codes and Development into the record:

My office has received a request to issue a building permit extending a garage in an R-1 district that currently has no setbacks. In addition when the new square footage is added to the existing parcel total the required 25% for compliance is now exceeded. Section 170-7 of the zoning code requires a minimum

of a 10' setback and Section 170-10 (D) requires a lot to have no more than 25% coverage. There currently is no official survey map available to make these calculations. I am utilizing a hand drawn map of the homeowner only.

If you have any further questions please contact my office  
@ 585 924 3311 x 224. Thank you.

Mr. Pancoast asked the applicants if they would like to share anything other than what is in the application regarding the requested variance. Mr. Muscarella stated that what they took down was bigger than what they propose to be put in its place. Mr. Muscarella explained that they took down a 750 sq. ft. deck behind the garage and would like to put a 250 sq. ft. (10' x 26') extension on the garage which would shrink the footprint of the property in order to put 4 cars in the garage rather than 2.

Mr. Crossing stated that there were emails between the Zoning Board and Code Enforcement Officer regarding whether two variances are necessary. Mr. Scarson stated that the second floor was taken into consideration when calculating area so in essence they are slightly under the 25% lot coverage and don't need a variance for area. Mr. Pancoast stated that a variance for setback is still necessary. Mr. Stone stated that it was determined that the proposed 250 sq. ft. addition would be in compliance but that a variance for setback would be necessary.

*Discussion regarding setback variance needed and setback requirements per code*

Mr. Pancoast stated that the rear setback and area are non-issues but that the side setback is an issue due to the fact that it is sitting on the property line.

*Mr. Pancoast opened the public hearing*

### **Greg Welch-173 Maple Avenue**

Mr. Welch stated that he lives on the Southern side of the Muscarella property and he encourages the board to grant the variance so that they may proceed with the project as he does not have any issues with the proposal.

### **Mark Button-Contractor for proposed project**

Mr. Button stated that the proposed garage addition will be 10 feet less than what the pool and deck were. Mr. Button showed recent pictures of the property which are now on file.

*Discussion about photos presented and clarified code regarding variances required*

Mr. Stone asked for the height of the proposed structure. Mr. Button stated that the peak of the roof will be 12 feet at the highest point. Mr. Chalupa asked which direction the roof will drain. Mr. Button stated that it will drain to the back. Mr. Scarson stated that no drainage will go into the neighbor's yard.

*Mr. Pancoast closed the public hearing*

2 persons spoke in favor of the application and 0 persons spoke against the application;

Mr. Pancoast then went through the balancing test with the Zoning Board members

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

***No - Unanimous***

Mr. Crossing asked why the need for the proposed garage addition. Mr. Muscarella stated that he has two old cars that are collector's items that he needs to store in the winter. Mr. Muscarella explained that he has been paying \$2,000 a year to store them and would like to extend his garage to make room for them.

Mr. Stone asked if any other options were considered. Mr. Muscarella stated that he thought of building to the middle but would be too close to his neighbor's garage. Mr. Muscarella explained that his lot is only 66 feet wide and according to the current zoning they couldn't build his house because his driveway runs right up the lot line and is only 8 feet wide. Mr. Muscarella stated that he looked at alternate designs but there was not enough room.

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

***No-unanimous***

**3. IS THE REQUESTED VARIANCE SUBSTANTIAL?**

***Yes-(Tim, Brian) No-(Dave, Brendon)***

Mr. Pancoast stated that the variance is substantial because it is sitting on a property line. Mr. Crossing stated that if this were a new build he would say it is substantial but considering the removal of the pool and deck he likes it better than what was there. Mr. Chalupa stated that the fact that it doesn't go out any further than it was means to him that it's not substantial.

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

***No-unanimous***

Mr. Crossing stated that it should be noted in the resolution that the drainage will not affect neighboring lots

**5. WAS THE ALLEGED DIFFICULTY SELF-CREATED?**

***Yes-unanimous***

*Discussion as to wording of resolution*

**Resolution #07-19ZBA**  
**165 Maple Ave./Regina Muscarella**  
**Area Variance Garage Addition**

On a motion made by Brendon Crossing, seconded by Tim Stone, the following resolution was APPROVED 4 AYES 0 NAYS

To grant a variance to allow the construction of a 10' by 26' (260 sq. ft.) addition to the existing accessory structure at 165 Maple Ave.; not to exceed 12' in height; no closer than the existing structure to the North side lot; utilizing a gutter system to prevent discharge of water onto adjoining lots.

**WHEREAS**, an application was received by Roseanne Turner-Adams, Zoning Clerk, for the Zoning Board of Appeals, from Regina Muscarella; on July 8, 2019, requesting an area variance to allow the extension of a garage in an R-1 district that currently has no setbacks where a minimum of a 10' setback is required. In addition when the new square footage is added to the existing parcel the required 25% coverage for compliance is exceeded.

**WHEREAS**, said application was denied by the Code Enforcement Officer for the Village of Victor on the basis of Section 170-7 & 170-10 (d) and,

**WHEREAS**, a Public Hearing was duly called for and was published in "The Daily Messenger" on July 23, 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 August 21, 2019 at which time all those who desired to be heard were heard and 2 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 and after due deliberation, the Village of Victor Zoning Board of Appeals made the following findings of fact:

- Through much discussion the board determined that only one variance was necessary for setback

**NOW, THEREFORE BE IT RESOLVED** that the application of Regina Muscarella to grant a variance to allow the construction of a 10' by 26' (260 sq. ft.) addition to the existing accessory structure at 165 Maple Ave.; not to exceed 12' in height; no closer than the existing structure to the North side lot; utilizing a gutter system to prevent discharge of water onto adjoining lots **Be Approved.**

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**11 A. Webster Ave./Jason & Coleen Jensen**  
**Area Variance to have pool in front yard**

Vice Chairperson Pancoast read the legal notice into the record:

A public hearing will be held before the Village of Victor Zoning Board of Appeals on Wednesday, August 21, 2019, at 7:00 p.m., in the Village Hall, 60 East Main Street, Victor, New York, to consider:

1.) The application of 11A Webster Ave./Jason & Coleen Jensen, for an area variance to the Village of Victor Zoning Code section 144 (5a) to allow the installation of a private 24' round x 48" high pool in the side/front yard of a corner lot which by definition has two front yards.

Sean Sanderson, Chairperson  
Village of Victor Zoning Board of Appeals

Vice Chairperson Pancoast then read the letter of referral from Codes and Development into the record:

A pool application has been reviewed by my office for an above ground pool at the above address. The pool is proposed to be erected in the side/front yard of a corner lot which by definition has two front yards. This is also a two family residence.

Per section 144 (5a) the installation of a pool is prohibited in a front yard of any home. Further the definition of a front yard for a corner lot is that the residence in fact has two front yards.

In addition the pool by code will remain a private pool and its size to be clear is 24' round and 48" high. If you have any further questions please contact my office at any time at 585 924 3311. Thank you.

Mr. Jenson explained that there are three houses on Webster Ave. on a curve and does not feel that his property is a corner lot.

Mr. Stone asked the applicant if he has considered screening or fencing for aesthetics. Mr. Jenson stated that the pool area will be landscaped when it is done and that there is a natural tree border on one side and the other side will be landscaped. Mr. Stone asked what pool materials will be used. Mr. Jenson stated that the pool is a vinyl above ground pool. Mr. Scarson asked if the pool is pre owned and if so how old is it. Mr. Jenson stated that the pool is pre-owned and approximately 6 to 7 years old.

Mr. Stone asked Mr. Scarson if this does meet the definition of a corner lot. Mr. Scarson stated that in his estimation it does but it is up to the Zoning Board to interpret. Mr. Chalupa read code 170-8 Corner and through lots which reads: *"All corner or through lots shall have such yard areas on abutting streets or rights-of-way as are provided for herein, except that the owner may choose which lot line he desires to consider his front line."* Mr. Chalupa stated that the only problem is that it is one street and not two streets. Mr. Pancoast stated that it is a big problem because it makes it a non-corner lot. Mr. Chalupa stated that if it were two streets it would then be considered a corner lot. Mr. Crossing stated that if it is corner lot it would have two front yards and a pool would not be allowed. Mr. Chalupa stated that if it is a corner lot he gets to choose his

front yard. Mr. Pancoast stated that Code Enforcement Officer Scarson referenced a code stating that a corner lot has two front yards 144 (5a). Mr. Scarson stated that 144 (5a) are additional regulations involving swimming pools in the front yard.

Mr. Pancoast read from code 170 definitions:

**CORNER LOT**

A lot or course of a lot at the junction of and abutting on two or more intersecting streets.

Mr. Pancoast stated that this is not a corner lot. Mr. Chalupa agreed. Mr. Crossing suggested looking at the definition of a front yard.

**FRONT YARD**

The open, unoccupied space on the same lot with the main building extending the full width of the lot and situate between the street line and the front line of the building projected to the side lines of the lot.

Mr. Pancoast stated that his front yard ends midway through the edge of his house. Mr. Stone stated that by definition this is not a corner lot, they are proposing placing the pool in the side yard so they don't need a variance. Mr. Pancoast agreed and referenced (Exhibit A). Mr. Scarson stated that if the Zoning Board interprets that a variance is not necessary that it should go down in the record.

*Discussion amongst Zoning Board regarding wording of determination*

Mr. Pancoast stated that it is the determination of the Zoning Board of Appeals that the property at 11A Webster Ave. does not meet the definition of a corner lot (170-3) and it is the determination of the Zoning Board of Appeals that the front yard extends North to South from the front of the building (170-3) where the pool is proposed meaning that the pool is being installed in the side yard (exhibit A) requiring no area variances.

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**ADJOURNMENT**

Meeting was adjourned on motion at 7:56 pm.

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Roseanne Turner-Adams, Minutes Clerk