

Town of Victor Zoning Board of Appeals, September 3, 2019

A regular meeting of the Town of Victor Zoning Board of Appeals was held on Monday, September 3, 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: Dan Blanding, Frame Shop, 6431 St. Rt 96; John Butler, Victor Historic Advisory; Colleen Sullivan, 6640 Richardson Road; Ed Kahovec, 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 Ms. Donna Morley, seconded by Mr. Fred Salsburg; RESOLVED that the minutes of August 19, 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

EXTENSION OF TIME:

Chadi Sarkis – Extension of time for building permit for 6739 State Route 96. Original permit was obtained in 2015.

Chairman Reinhardt – First on the agenda is an extension of time for 6739 State Route 96, Mr. Sarkis. He's not here. Well we could hold that and circle back.

PUBLIC HEARING:

1. COLLEEN SULLIVAN 31-Z-2019
6640 Richardson Road
Area variance to construct a 24'x12' shed in front of the home, 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.

Chairman Reinhardt – You're here. Outstanding.

Town of Victor Zoning Board of Appeals, September 3, 2019

Ms. Colleen Sullivan – I am here. Good evening.

Chairman Reinhardt – So you would like a 24'x12' shed in front of your home.

Ms. Sullivan – Yes, I would.

Chairman Reinhardt – Looks like the distance that you are requesting is 17 feet 6 inches?

Ms. Sullivan – That's correct.

Chairman Reinhardt – And, I think as your application and after looking at your home from the street it would be to the left. And that would mean it's the west.

Ms. Sullivan – That's correct.

Chairman Reinhardt – Ok, with that is there anything you'd like to talk to us about? We have five criteria that we are working with, have you looked at those criteria?

Ms. Sullivan – Yes, sir I have and I tried to address those in my letter to you, if you've had an opportunity to look at that? Obviously, if I have a shed, I want; I have a tractor, I want to plow. I want that readily accessible to me. I don't want to have a shed out in my back yard and have to traipse out to the backyard to the shed to get the tractor and plow to drive out to plow my driveway. So, I would like to have things readily available to me. As I indicated if I had animals or something like that. I was going to have a little farm to set up that would be different. I have plenty of land that I could put a shed out back, but because I want it basically for maintenance. It's lawn equipment, my tractor, plowing, I want to have that right so I can just drive right onto my driveway.

Chairman Reinhardt – So, we've seen these applications before and sometimes this board grants the variance because of a number of reasons either the lay of the land and the topography doesn't allow the shed to be placed behind the home. Septic tanks or fields, any number of things, but I'm not seeing any of that here. You're telling us you have acreage and it can go back there, but you just don't want it back there. Is there a reason other than just convenience why you want it in front of your home?

Ms. Sullivan – Well I guess like I said I have a tractor. I mean you've got three feet of snow, I don't want to have to traipse out behind the house to the shed to get a tractor out of the shed to drive back out to do my driveway. I would like it readily accessible.

Chairman Reinhardt – So if it's 17 feet in front of your home, why can't you have it 17 feet behind your home and it's the same distance from traipsing 17 feet south or 17 feet north? What's the difference?

Ms. Sullivan – I'm not driving out onto my driveway.

Chairman Reinhardt – So you're trying to get it in close proximity to your driveway.

Ms. Sullivan – Yes, sir. And, there's a huge hedgerow between my neighbor's and myself. My neighbors, I went over and talked with them about it. They did not have any concerns about me putting up the shed. You see the pictures there where I have it marked with the red tape where I would expect the

Town of Victor Zoning Board of Appeals, September 3, 2019

shed to go, so you can see from the road and they asked me if that's where I expected the shed to be. I said yes. I offered them a copy of the complete packet that I presented to you tonight. They declined, they said they didn't have a problem with it.

Chairman Reinhardt – I took a look at the aerials and I didn't see any sheds or structures in front of the home on Richardson. Is that accurate or did I miss something?

Ms. Sullivan – Any other homes?

Chairman Reinhardt – Well sheds that are in front of the home.

Ms. Sullivan – I can't think of any off the top of my head.

Chairman Reinhardt – Because that would go to the character of the neighborhood. The character of the neighborhood, if the sheds, garages what have you, if all those structures are behind the home then that's consistent with the character of the neighborhood. What you're asking to do here is something that's different than the character of the neighborhood. Would you agree with that or not?

Ms. Sullivan – Well I guess if you're going to be that specific about that there's no other shed in front of a house, I mean I can't dispute that. I can't think of any off the top of my head, but I really went to great lengths to be sure to choose a style that I thought would fit into the neighborhood. You can see that picture which is in the packet, it's certainly doesn't look like a barn. I mean I certainly could have selected a cheaper shed. I didn't want a cheaper shed. I wanted something that was going to look nice. That was going to be next to my house. And certainly I don't want any neighbors complaining about the shed.

Mr. Benedict – For what it's worth, this board did approve a variance for a barn in front of a house almost across the street from this property.

Chairman Reinhardt – When was that?

Mr. Benedict – I think somewhere within the last year.

Mr. Morley – I think it was the Sharp's.

Mr. Nearpass – Holtz.

Ms. Sullivan – I don't know the neighbor's names yet. I only know the Cramer's next door, so I'm sorry I don't know any of those names.

Mr. Benedict – They didn't build it yet, so it's not there.

Mr. Nearpass – Is that part of a farm operation?

Mr. Benedict – It was a farmer's field. They've sold off a piece to one of the relatives to build a house as well as the barn in front of the house.

Town of Victor Zoning Board of Appeals, September 3, 2019

Ms. Sullivan – Well that hasn't been built yet, right?

Mr. Benedict – Correct.

Ms. Sullivan – That was my understanding is that the shed was going to be up by the trees, but behind the trees so I guess it's not visible from the road. I think one of the code officers had mentioned that to me.

Chairman Reinhardt – I'll probably circle back with a couple of questions. Do you have anything else you want to add before the board asks you some questions?

Ms. Sullivan – No go ahead, that will help me direct.

Chairman Reinhardt – Donna, what do you think?

Ms. Morley – I have to walk to the back of my house to get my snow plow out, so this is more to me a want than a need. I don't have any other questions. She's got ten acres it looks like, to choose from to put it in the back. And it's very close to the road? I don't know how many feet from the road it is.

Ms. Sullivan – It's 80.2 feet I believe from the front porch to the center of the road.

Ms. Morley – But, where would the shed be?

Ms. Sullivan – The shed would be 17.6 feet up from that, so instead of 80.2, it would be what, 64 feet from the front of center of the road to the front porch and that would be facing the road.

Ms. Morley – I don't have any other questions.

Mr. Nearpass – I'm having a tough time with it, too, for all the same reasons. One of the questions I have is, why not just add a second garage? You know you see some of the garages with a two bay door like you have and then there's a second one with a smaller door for the plows, for the tractors, for those type of accessories.

Ms. Sullivan – Well that will be the next stop.

Mr. Nearpass – Well then I don't know how you would get out of it. And then in that case you might be here looking for a variance to be closer to the side lot or something to that effect, but

Ms. Sullivan – I own 28.2 feet on the other side of my garage, so that's why I couldn't go. I know I can't be any closer than 15 feet.

Mr. Nearpass – Unless you're giving a variance for it. There's another way, I'm not saying we would definitely grant it, but I think in terms of one of the other criteria is there another way feasible for the applicant to pursue what they are getting at. I think that's one of them. Obviously putting the shed in back. Also, the shed, I know we call them sheds, but it's 24x12. I was counting, I think that's from that ceiling tile to that one. These are two foot tiles? So that would be 12 of these things and over. It's a

Town of Victor Zoning Board of Appeals, September 3, 2019

good size, almost 300 square feet. How is it going to be oriented? Is the front of it facing the road or is the front of it facing your driveway?

Ms. Sullivan – It would be facing my driveway. Because I only have 13 feet to play with on the side of my garage, so it would be facing so the doors would open on to the garage, but I would also have a garage door on each end and so I could drive out into the back yard as well as drive into the front yard.

Mr. Nearpass – So you also need a variance to be closer than 15 feet to the property line?

Mr. Benedict – That's correct.

Mr. Nearpass – I didn't see that one here.

Mr. Benedict – Well she doesn't need that variance, because she's not proposing that from what I understood.

Ms. Sullivan – No that was not my initial request, although I did say in my letter on the front. I said in the alternative if you didn't grant that if it was moved back a few feet, then I would like it moved toward my neighbor a few feet. Because it's so tight and you could see some of the pictures if it was any closer to house which would be the corner of the garage, it would not give me much room to even walk through. If I put it as close as I could, I'd have literally one foot.

Mr. Nearpass – Right now I'm just not seeing it. I think you've got 10 acres and I know it's convenient. I can't quite find as Mike was talking about the one or two anchor reasons as to why whether it's the topology or some other aspect that's unique to the application that's preventing you from putting it somewhere else. I get it, it's a convenience, but I think there are other ways that might obviously be less convenient for you, but still be compliant with the code to do something like this. I want to hear what everyone else has to say, too, so I'll keep an open mind, but I'm just not finding the

Mr. Harter – I have the same sentiment as Matt, I think why everything has to be focused in the southwest, is this pointed up north? In the corner of the property when there's so much property and there are other viable alternatives, so that's my comment, I don't have any questions.

Mr. Salsburg – Yes, ma'am, as I looked at it as though if it was my house, what would I want to do if I had the same stuff and I do have some of the same stuff. I thought it was going to look very crowded and there's the turnaround as you go toward the house, if there was a driveway down the end of the house and it sat behind it, you don't have to be very far away from the house, a few feet, by code that's what I would rather do than put it in the front. So, I don't see you thought it wasn't substantial in your documents, I think it is substantial. And, I also think there's, in my way of thinking a better way. Everybody puts there's out back, almost. And I think you should, too. Sorry, but that's my opinion.

Ms. Sullivan – That's quite alright.

Chairman Reinhardt – So before I open it up to the public, anything else you want to add, or comment, respond to what we talked about?

Town of Victor Zoning Board of Appeals, September 3, 2019

Ms. Sullivan – No, I think I explained myself. I gave you all the pictures. I put it in my letter. I really don't think I have anything else to say.

Chairman Reinhardt – You've done a fine job on the presentation. Just trying to give you an opportunity to respond to our comments, concerns and questions. Anyone from the public, want to speak for or against this application? OK. I think the board is pretty much on the same page, especially looking at the survey. When you are in the southwest corner and you have 10 plus acres to work with, and all I'm really hearing it boils down to, is convenience. This board looks at the facts. We look at the facts compared to the criteria, we have to be able to fit them in somehow. This is an area variance. Doesn't mean just because you don't get one of the criteria, it isn't a deal breaker, but it's collective and it's a weighing of each criteria. I'm not quite seeing if we are going to go through the criteria, that it's going to meet the muster of granting the variance. I think even by your own words you've said that potentially you can put it on the western portion of your home or certainly behind it. But even if it's on the western portion of your home, you're going to need a variance for that as well. That's a different set of facts and a different situation, so we can't really address the, in the alternative can you do, fill in the blank? We're really looking at something different. I think there'd be a new application. Al, would you agree with that?

Ms. Sullivan – Are you talking about behind my house?

Chairman Reinhardt – No, if it was behind the house, what is it 15 feet? If that shed was 15 feet away from the house, there's no issues. Five feet? What's the

Mr. Benedict – You can go right up to the garage or the house.

Ms. Sullivan – The thing of it is, I can't because I have a large 6 foot fence that I put in. I got a permit for that when I first moved in a year ago, so I have a fence that goes around and comes up behind, well it doesn't come up right next to the garage, but not too far from the garage, so it extends out so I wouldn't be able to fit a garage in. I don't know how I would be able to get in and out of there? I don't think I could fit one in. Or I'd have like a 1 foot like I do now because I only have the 13 feet on the side of my garage to work with. It would have to be behind the fence in my back yard.

Chairman Reinhardt – So, the fence that's on the western portion of your home is how close to the house?

Ms. Sullivan – Well it connects right up to the deck, but it doesn't go right up to the behind the garage it cuts back in. Like it's over, you can see the map, the overhead picture here, there's a little tiny plastic shed that addition off the back of the house there, the fence is all around that and that's pretty much where the fence ends, but there's not much room there. I don't know maybe there's 12 feet between the back of the garage to the back of that addition that would had been put on to where the fence comes in right by the addition. But it goes right down probably out as far as the side of the garage, so there's not going to be room for a shed along there because of my fence.

Chairman Reinhardt – Still I think there's ample room in your back yard to put a shed someplace whether you build a driveway, a stone path or something to make it as far or as close as you want. I'm just not

Town of Victor Zoning Board of Appeals, September 3, 2019

seeing and I think the board collectively doesn't see how it fits the criteria. Is there anything else you want to add before we walk through the criteria?

Ms. Sullivan – No, sir.

Chairman Reinhardt – You have a choice, you could withdraw your application and resubmit it in a different format or different location, we'd take a look at it. But there are consequences that if this board votes as I think it's going to do, there's a limit on when you can reapply for that same kind of variance. You understand that piece?

Ms. Sullivan – Like, what's the time limit?

Chairman Reinhardt – It's two years?

Mr. Benedict – One year.

Chairman Reinhardt – One year. So, one year, if you were to ask for a variance in front of the home, you couldn't apply for that variance until a year from when we make the decision.

Ms. Sullivan – If you deny this and then I opt to put in a third bay and let's say I need a two foot variance, that's not going to prevent me from coming back for that is it?

Chairman Reinhardt – No that's a different variance.

Mr. Nearpass – I think that would be different.

Ms. Sullivan – Ok, then no, I'll just go ahead with tonight, you can make your ruling and we can just go from there.

Chairman Reinhardt – Very good. So the first criteria, 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. Outside of I think it's the Holtz property, there are no other barns, sheds in front of the home. I think the Holtz property is arguably different because that barn is not visible from the street.

Ms. Sullivan – It's not even up yet.

Chairman Reinhardt – Pardon me? The proposed barn, where it's going to be as our analysis was, was that it was not going to be visible from the street.

Ms. Sullivan – That was my understanding.

Chairman Reinhardt – Other factors, is that you have 10+ acres you can certainly put it behind the home. Other factors, anybody want to add anything else for the first criteria?

Town of Victor Zoning Board of Appeals, September 3, 2019

Second, the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. It's primarily that you have 10+ acres and you certainly can put that shed in the rear or anywhere else besides the front of the home. Anyone want to add anything else for the second criteria?

Third criteria, is the requested area variance is substantial. Asking for 17 and a half feet, especially in light of that you have 10+ acre behind is arguably substantial. Anyone want to add anything else for the third criteria?

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

I'm not hearing anything that that shed in that location would have any kind of adverse impact on the physical or environmental conditions of the neighborhood. Any additions?

Mr. Harter – Just a visual impact.

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. Does anyone else want to add anything else to the criteria that we've set out?

Hearing none, entertain a motion to deny the variance.

Mr. Harter – So moved.

Chairman Reinhardt – Second?

Ms. Morley– I'll second it.

Chairman Reinhardt – All in favor? (Aye) Opposed? (None) Carried. Thanks for your time.

Ms. Sullivan – Thanks for your consideration.

RESOLUTION: Sullivan Shed Area Variance, Appl. No. 31-Z-19

At a regular meeting of the Town of Victor Zoning Board of Appeals held on September 3, 2019 the following resolution was adopted:

WHEREAS, an area variance application was received by the Secretary of the Zoning Board of Appeals on August 20, 2019 from Colleen Sullivan, 6640 Richardson Road, Victor, NY to construct a 24'x12' shed in front of the home, whereas §211-31G(2) states no accessory structure shall be forward of the primary building.

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 25, 2019 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

Town of Victor Zoning Board of Appeals, September 3, 2019

WHEREAS, a Public Hearing was held on September 3, 2019 at which time no residents spoke for or 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 be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

Justification: Other than the proposed barn on the property across the street, which will not be visible from the road, there are no other accessory structures in front of the home in this neighborhood. Applicant has 10+ acres on which the shed can be located.

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: Applicant has 10+ acres on which the shed can be located.

3. The requested area variance is substantial.

Justification: The requested seventeen and a half feet, especially in light of having 10+ acres behind the home, is arguably substantial.

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

Justification: Nothing was presented that would suggest a shed in that location would have any kind of adverse effect on the physical or environmental conditions of the neighborhood.

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 Mr. Morley:

DECISION:

NOW, THEREFORE BE IT RESOLVED the application from Colleen Sullivan, 6640 Richardson Road, Victor, NY requesting an area variance to construct a 24'x12' shed in front of the home, whereas §211-31G(2) states no accessory structure shall be forward of the primary building, BE DENIED.

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

Town of Victor Zoning Board of Appeals, September 3, 2019

Approved: 5 Ayes, 0 Nay

2. THE FRAME SHOP, DON BLANDING

30-Z-2019

6431 State Route 96

Requesting a Sprinkler Waiver for a 24'x36' addition. The building is required to have a sprinkler system per §83-4F(2)(a) of the Town of Victor Code which states that all structures shall be required to have an approved fire sprinkler system installed and operational, however, §83-4F(2)(d) states that the Zoning Board of Appeals can grant a waiver. The property is zoned Commercial/Lt Industrial and owned by the applicant.

Mr. Don Blanding – My name is Don Blanding. I purchased the property at 6431 State Route 96 with the intent on moving my picture framing business there. I've had a picture framing business with my family has since 1976 and I kind of was hoping I could have a place that I can pay a mortgage on for a little while instead of rent, so I thought that was a good spot. But, come to find out that the sprinkler system has to come from across the road and has to go under the road and that might be a deal breaker for me being able to do what I'd like to do. Hopefully there's some suggestions that some of you may make that would as alternatives to the \$100,000 or so that it might cost to get a sprinkler system in the building from across the road, underneath 96.

Chairman Reinhardt – OK, so I'm sure the board is going to have a number of questions. We've been down this path before. Fred, you have any questions?

Mr. Salsburg – Well the fire service plan review gave you an option. Move the fence and make more room for the fire truck to get in because it's back too far.

Mr. Blanding – I did that. That was all done.

Mr. Salsburg – You've already done that?

Mr. Blanding – I took three trees out and trimmed another and they said that was good.

Mr. Salsburg – Well that's a step.

Mr. Nearpass – I don't know if it was an option.

Mr. Blanding – It wasn't an option, in lieu of the sprinkler system.

Mr. Nearpass – It was in addition.

Mr. Blanding – Yes, it had to be done to get the fire trucks in.

Mr. Salsburg – In the last few sprinkler waivers that I can think of, there's been a very light fire load in the building. I wonder how yours compares?

Mr. Blanding – The addition I'm putting on is a metal building from Morton Metal Buildings. There's no; I don't cut any frames there. They're cut and brought to me at that location and I would join them. I

Town of Victor Zoning Board of Appeals, September 3, 2019

glue and nail the corners. So there's no combustibles. There's no, I don't stain molding. I get it cut and then I put it together. So, there's not really certainly in the metal building and in the existing building in my work area if it needs to have alarms or something that is; someone, I don't remember who mentioned to me, that maybe you can get something that's a line that's connected to the fire department in such that they can get there fast.

Mr. Salsburg – That's been kind of standard. You'd be willing to do that?

Mr. Blanding – Oh sure. If it will save me \$100,000 or so.

Mr. Salsburg – Or more. Is there employees?

Mr. Blanding – Right now where I am now, it's my son and myself. And, I have one lady that works every other Saturday or so. So, mostly it's just my son and myself. I probably would if I can get this thing going out here, I would probably stay where I am in Fairport just to make sure things are going to fly and I'd have two going for a little while. But eventually, I'd like to move here from there.

Mr. Salsburg – That's all.

Mr. Harter – I'm trying to read through the fire marshal's comments and understand his position. It looks like obstructions needs to be eliminated in the driveway and you say that you've done that, is that correct?

Mr. Blanding – We addressed that at the planning board and I took two big trees out.

Mr. Harter – So, Bob Graham says on page 1 of his letter, "therefore currently the building does not conform to the fire code of New York State. One of the following options may be used to conform to the fire code of New York State; options are obtain a state variance, two, sprinkle the building. If the building was sprinkled the fire code access could be extended. It should be noted the building is also required to be sprinkled by town code or receive a waiver from the Zoning Board of Appeals." I guess that's us.

I'm trying to figure out whether this is an *and or an or* situation? Are you supposed to reduce the obstructions in the driveway or get a waiver?

Mr. Blanding – The trees that I cut down that was the first thing to do, which I've done.

Mr. Harter – So, he wants all this done, then?

Mr. Salsburg – He does kind of separate it out in the last sentence, if option three was utilized, as if you

Mr. Harter – You're a fire person, can you tell me what?

Mr. Salsburg – If option three was utilized, implies that if you didn't do one or two, you could do three.

Mr. Harter – That's how I read it.

Mr. Blanding – I could have put a sprinkler system in and leave the trees there? Is that what you're saying it reads?

Town of Victor Zoning Board of Appeals, September 3, 2019

Mr. Harter – That’s how I kind of read it.

Mr. Nearpass – Bob says obviously he talks about a waiver then it says, “in this situation, we would be accepting of a waiver if the fence on the west side of the building could be removed and or repositioned at least 10 feet back from current position. This would allow better access for fire fighters.”

Chairman Reinhardt – That’s how I read that.

Ms. Morley – Right.

Mr. Nearpass – So, he would support a waiver of the sprinkler system if you did that.

Ms. Morley – You said you cut the trees, did you move the fence?

Mr. Blanding – No, the fence is a fenced in yard from the house. I’d be happy to move the fence, if that’s.

Chairman Reinhardt – I misunderstood, I thought you said earlier the fence was moved.

Mr. Blanding – No, no the trees were cut down.

Chairman Reinhardt – The trees were cut down.

Mr. Nearpass – There’s another statement about the trees.

Mr. Blanding – The entrance to the property, there was two big pine trees to the east edge of the property. Actually there was three. So, I cut two down and I trimmed the other one which overhung a little bit.

Ms. Morley – When you pull into the east though, there is a fence that goes down the side?

Mr. Blanding – I don’t think that’s the fence he’s talking about, he said the west.

Ms. Morley – “If the fence on the west side of the building could be moved.”

Mr. Blanding – Yeah, so that’s closer to the village.

Ms. Morley – Ok, that’s the backyard fence then.

Mr. Nearpass – So, do I understand it right, the current structure that’s in the driveway is being knocked down?

Mr. Blanding – No, it’s going to be added on to in front of it.

Mr. Nearpass – Oh, OK.

Mr. Blanding – So the front part of it will be my showroom, which will look nice and the back will be functional.

Town of Victor Zoning Board of Appeals, September 3, 2019

Mr. Nearpass – Where all the work happens.

Mr. Harter – Sounds to me that if he takes care of the fence and the trees, that might make Bob Graham happy.

Mr. Nearpass – So, normally, Bob would have other conditions about storage, non-flammables and things like that, right?

Mr. Blanding – I could certainly comply with that because there wouldn't be any.

Chairman Reinhardt – We usually walk through, primarily, it's my understanding the reason for this sprinkler system to be in place is more so for the protection of the fire fighter. That when a fire breaks out and if there's a sprinkler system in place, certainly the safety of those workers that are in or about the structure, but also then when the firefighters come out so that their protection is increased because suppression is already started. If a fire starts and there's gas, fertilizers, what have you and it's on site, fire fighters often times, we can't do anything with it and it gets out of control. So materials are replaceable, lives aren't. And, also then if we were granting waivers, what we also look at not only combustibles, but is there heat, is there electricity and other things that could ignite a fire? If you're going to be working in there I imagine there will be some type of heat source, in there. Is that right? Electricity, right? I know you said you're not cutting anything, but you're doing some assembling. Is there power equipment there? Just glue? How do you assemble them?

Mr. Blanding – The frames are cut. I join them. Glue and a vice.

Chairman Reinhardt – So, there's no power equipment.

Mr. Blanding – No power. I don't cut any frames there.

Chairman Reinhardt – Sounds like you, your son and another worker at some point in time, you'll have potentially three people in that building.

Mr. Blanding – Potentially.

Chairman Reinhardt – So, I think that's what I'm imaging this board is having a bit of curiosity with is most of the time we hear our response from Mr. Graham saying hey there are going to be employees there, there's combustibles, there's electricity. But we're not seeing any of that. If you move the fence away and get the trees out, then he seems to be ok with it.

He's not the decision maker, we are.

Mr. Blanding – Ok, fair enough. But I guess we can get clarity from what he's saying so you're on the same page as he is, I guess.

Chairman Reinhardt – It sounds like you would be acceptable to moving that fence.

Mr. Blanding – Mm hmm.

Town of Victor Zoning Board of Appeals, September 3, 2019

Chairman Reinhardt – That’s on the west side. How would you go about moving the fence?

Mr. Blanding – Take it down and move it. I guess.

Chairman Reinhardt – OK. When would that happen? How much time you need to do that? A time frame? Two months? What’s a reasonable time for you to move that fence? If this board grants the waiver, what’s the limit of time that you’re going to tell us, I can move that fence, fill in the blank.

Mr. Blanding – Well, I think I wouldn’t do it myself, so I guess I’d have to find somebody that would do that for me and it would be well before the building was built. I would say that. But, I guess I would say if whenever you would like me to have it done. If you tell me you want it done in two weeks, I’ll start the ball rolling tomorrow and move it.

Chairman Reinhardt – So if I understand you that fence would be moved before you or any other workers were in that structure?

Mr. Blanding – Oh yeah. I think that from what I understand the metal buildings once they start going up they go up pretty quick, but then I’ve got to, and it’s insulated, but I have to do walls and inside stuff.

Chairman Reinhardt – What’s the square footage?

Mr. Blanding – It’s ...

Mr. Salsburg – 900 square feet, is it?

Mr. Blanding – Yes, it’s 20 x 36. It’s 720. You may have on your thing was 24 x 36 addition. It was too close to the house, so I scaled it back and have them make new plans, so it’s now 20 x 36 instead of 24 x 36.

Chairman Reinhardt – Al, do you know what a reasonable number of fire extinguishers, if the board decided to put a condition on waiving the sprinkler, but requiring a certain amount of fire extinguishers, is there a number that fits in with the square footage he has?

Mr. Benedict – Code would require one within seventy-five feet from any location. I’m sure there would be at least one. If this board wants, they could ask for more.

Mr. Nearpass – The only other thing I could think of was as well is Bob may be very understanding in this particular instance. He might not have said it here, of the financial aspects of it, if truly the water has to be run from the other side of 96.

Mr. Blanding – He mentioned that to me.

Mr. Nearpass – There’s also been other cases where generally when he pushes back, he may feel it’s financially feasible for an applicant in an XYZ he may have already put that in the common denominator of his decision, although maybe he didn’t put it in writing. The only thing I can think of that maybe Bob wouldn’t just say, “Yeah, I totally understand it would be \$100.” Often we have people come in here saying it’s going to cost us \$100,000 and us and Bob can’t see it. They don’t have estimates and there’s other alternatives.

Town of Victor Zoning Board of Appeals, September 3, 2019

Mr. Blanding – I got an estimate. I just asked him what it would cost. He came out and he spent an hour going through the building, about what kind of sprinkler system would you have, but the bottom line is he looked across the street where the hydrants are and he says that's got to come under that road and that was kind of the deal breaker. If I could get the water there, the sprinkler system wasn't an issue for me. I'd be happy to have a sprinkler system, but it was getting it under the road and that's what he said. He was kind of like, "holy cow, that's a long ways away and that's got to come under this road and under the parking lot", which is a big deal.

Mr. Harter – What's your current supply of water?

Mr. Blanding – There's no water at the thing. There's water at the house. There's water and sewer. There's a house on the property.

Mr. Harter – How does water supplied to that house? How does that house receive water? Must be connected to the water main, right?

Mr. Blanding – Yeah, but I think it's not, this isn't my forte, but I've been told by this guy and others, that it would have to come under the road that I couldn't take water from that house. The water that's from the house is a smaller thing that couldn't supply a sprinkler system, I believe. Don't quote me on that, but that's my understanding. That the water from the house is not sufficient for whatever it needs to have. I think it needs a bigger.

Mr. Salsburg – I'm sure that's true.

Chairman Reinhardt – Now for a new structure, of what he's proposing, do smoke detectors need to be hardwired in? Is that right?

Mr. Benedict – Pardon?

Chairman Reinhardt – Smoke detectors, we need smoke detectors.

Mr. Benedict – I couldn't tell you for sure. May be underneath the square footage that requires a smoke detector. As far as the state code goes.

Chairman Reinhardt – How do you feel about having at least one smoke detector hardwired in to it, into the electrical system?

Mr. Blanding – I feel fine.

Chairman Reinhardt – And arc fault protection, you'd have that? We're just looking for safety devices. Arc fault in your receptacles? There's a difference. You can have ground fault.

Mr. Blanding – Whatever it needs to be. I'm going to put electric, there's electric to the building, but I will have an electrician. I'm not sure if what Len Rugg had in that building is up to date.

Chairman Reinhardt – You're open to that?

Town of Victor Zoning Board of Appeals, September 3, 2019

Mr. Blanding – Oh yeah. Whatever I do in that building will be done by an electrician to code and whatever it needs to be.

Chairman Reinhardt – Anyone else want to add or comment?

Mr. Salsburg – Maybe have the alarm system agreeable to the style that Bob Graham says would be the right.

Mr. Blanding – I'd be happy to work with Bob and have him tell me what he wants me to do.

Mr. Nearpass – So, there is going to be an alarm system or no?

Mr. Blanding – I'd say yes, if

Mr. Nearpass – I'm just taking a much more simplistic approach. My opinion is as long as he adheres to the code and largely this part of the code for the sprinkler system is for the protection of Bob and his team. And Bob clearly laid out what he's ok with. I'm ok with what's minimally compliant. I don't want to try to, can you have a sprinkler system, can you put ground fault, can you put all these other things? Obviously we want it to be safe, if you're going to have the fire extinguishers within 75 feet for the code. Is there anything? I'm trying not to just stack other things on top of you when Bob is, it's just my opinion, I'm one of five, when Bob is saying you cut the trees down, you move the fence 10 feet or you get rid of it, that's helps with the safety of my team. The building is small enough for, it seems like people to be able to get out, there's entrances and exits per code and those kinds of things. I'm ok with it.

Mr. Blanding – And, I don't mind if you want to table it until I talk to Bob and he tells me what I need to do?

Mr. Nearpass – I think Bob has told us what you need to do and you've done 50% of it. You took down the trees and there's a fence you need to do something with.

Mr. Blanding – So your approval or disapproval can be based on whatever Bob tells me I need to do. In addition to what he said so far I guess.

Chairman Reinhardt – Al, do you have any thoughts, comments on this?

Mr. Benedict – It seems as long as you satisfy what Bob has outlined, making the access better for the fire department then I think like Matt's view is, let the code be the code. Let them justify it. Let the code dictate what needs to go in there.

Chairman Reinhardt – So there were a number of conditions that were proposed. Matt appears to be taking a more conservative view on the requirements and there's others that want more, so we need to try to get on the same page here. I think it's important that Mr. Graham is giving us some outlines. I think we're all on board with that. The next question is what if any conditions are going to go along with this. If I understand Matt right, let's just do what Mr. Graham is asking to do and you're going to do it. Fire extinguisher, smoke alarms and everything else seems to be a bit up in the air right now. Fred, what do you?

Mr. Blanding – So, someone will tell me how many fire extinguishers I should have?

Town of Victor Zoning Board of Appeals, September 3, 2019

Chairman Reinhardt – Well that's what we're working on. We're trying to figure out, what if any, if you need a fire extinguisher. If you need a smoke alarm. If you need GFI and a host of things that we were just discussing and trying to figure out. Is it necessary or not?

Mr. Blanding – I interrupted. I guess you weren't talking to me you were talking to them.

Ms. Morley and Mr. Nearpass – The code tells us.

Mr. Nearpass – If we want to be more restrictive.

Mr. Salsburg – How many exit doors do you have?

Mr. Blanding – There's a door into the building now, just a regular door, which I may, I probably will put a new door in there, because it's an old door. I'll put something else in.

Mr. Salsburg – It goes outside now?

Mr. Blanding – Yes. And in front of the building there's a double door that opens up wide enough to get things in and out. And, I may add another door. I'm thinking I might want to add another door for deliveries of things which would be on the east side of the existing building which could go into my work area and that might be a double door where I could get things in to there.

Mr. Salsburg – My suggestion would be a fire extinguisher by each door with a smoke and heat detector system in it.

Mr. Blanding – Yeah.

Mr. Salsburg – In addition to the moving of the fence.

Mr. Harter – I'm neutral on the conditions. I could go either way.

Ms. Morley – I'm in agreeance with Matt.

Chairman Reinhardt – So, it sounds like the consensus is that you follow along with Mr. Graham's recommendations. Sounding like you're willing to do that. Sounds like you're also going to comply with the current code whatever requires from smoke detectors and fire extinguishers and I hear what Fred is saying, but it seems like the rest of the board is in agreement that we go with Mr. Graham has said and follow the code the rest of the way. So with that, anyone else want to add anything else before we go through the criteria?

First criteria, an undue economic hardship.

The applicant has provided a letter from Fire Protection Inc, dated August 20. Looks like it would be an estimate of about \$100,000 as well as, well that's the second criteria. It does satisfy the economic hardship criteria.

Second being the physical or legal impossibility.

Town of Victor Zoning Board of Appeals, September 3, 2019

The applicant has pointed out, that because the source of the water, the hydrant is on the other end of the road, it would be physically, if not also economically difficult to complete a sprinkler system.

Third, the impediment to the intended objectives of this section.

Since we have feedback from Mr. Graham, and that you're willing to move the fence and you've already taken the trees out as requested by Mr. Graham seems to satisfy the objectives.

Fourth, the necessity in light of other viable alternatives which meet the objectives of the code section. What Mr. Graham has outlined seems to satisfy the fourth criteria.

Fifth, as we've just discussed, the recommendations and comments submitted by the coordinated review by the Fire Chiefs of the Victor and Fishers Fire Districts and the Town of Victor Fire Marshal.

Does anyone want to add anything to the criteria that I've laid out? Also, saying that no one spoke for or against the application, so I would entertain a motion to grant the variance as proposed with the conditions outlined by Mr. Graham.

Mr. Nearpass, seconded by Mr. Harter.

All in favor? Aye. Opposed? Mr. Salsburg – Nay.

Chairman Reinhardt – Are you opposed? You're a nay. Ok. It's been granted.

Mr. Blanding – So I should talk to Bob Graham to make sure I know all these things that or just talk to whoever is the code enforcer?

Chairman Reinhardt – I would strongly recommend that once you, you're going to submit a building plan and let Al know that that fence has been moved.

Mr. Blanding – Ok.

Chairman Reinhardt – And, you're not going to have, if I understand your statement, you are going to move that fence before that building is constructed. Is that right? You are not going to be in that new structure.

Mr. Blanding – No, no. Absolutely.

Mr. Nearpass – Al, would this ultimately be a condition of the CofO, does this work its way into, unless the conditions of the variance are met, you wouldn't get a CofO anyways to occupy the building? The waiver, I'm sorry.

Mr. Blanding – I guess what I'm saying is that I want to ask Bob how far I have to move it.

Mr. Nearpass – He said 10 feet.

Mr. Blanding – He did? Oh, ok I didn't know it was in there.

Town of Victor Zoning Board of Appeals, September 3, 2019

Mr. Nearpass – Yes, 10 feet back from his current position. At least.

Mr. Benedict – I suggest you get a hold of Bob and see if he knows what you are going to need to do besides moving the fence. Once we know the fence is moved you can submit your application for your building permit. And I'll check with Bob, or whoever will check with Bob to make sure that all the criteria has been set aside with him as well as this board before we will issue the permit.

Mr. Blanding – Ok. Free to go?

Chairman Reinhardt – Yes, sir. Thanks for your time.

RESOLUTION: The Frame Shop, Don Blanding Sprinkler Waiver, Appl. No. 30-Z-2019

At a regular meeting of the Town of Victor Zoning Board of Appeals held on September 3, 2019 the following resolution was adopted:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on August 20, 2019 from Don Blanding, The Frame Shop, 6431 State Route 96, Victor, NY requesting a fire sprinkler waiver, per the Town of Victor Code (see Chapter 83-4F (2)(a)) for a 20'x36' addition, however, §83-4F(2)(d) states that the Zoning Board of Appeals can grant a waiver; and,

WHEREAS, said application was referred by Al Benedict, Town of Victor Code Enforcement Officer, on the basis that the structure is required to have an approved fire sprinkler system installed and operational; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on August 25, 2019, and whereby all property owners within 500 ft of the application were notified by U.S. Mail; and,

WHEREAS, Robert Graham, Town of Victor Fire Marshal, reviewed the application. In a coordinated fire service sprinkler waiver review with the Victor and Fishers Fire Services, Mr. Graham commented on August 23, 2019, the Fire Service supports local law requiring fire sprinklers in commercial buildings, but understand in some situations, a waiver may be appropriate. In this situation, the fire sprinkler waiver should include the conditions listed below;

WHEREAS, Public Hearings were held on September 3, 2019 at which time no residents spoke against/for 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 considered the following:

1. Undue economic hardship.
The applicant has provided an estimate of over \$100,000 from Fire Protection Inc. dated August 20, 2019.
2. Physical or legal impossibility.

Town of Victor Zoning Board of Appeals, September 3, 2019

Because the source of the water is across the road, it would be physically and economically difficult to complete a sprinkler system.

3. Impediment to the intended objectives of this section.
Applicant has removed trees and will move the fence as requested in the coordinated review by the Fire Chiefs of the Victor and Fishers Fire Districts and the Town of Victor Fire Marshal.
4. Necessity in light of other viable alternatives which meet the objectives of the code section.
What is outlined in the coordinated review by the Fire Chiefs satisfies the fourth criteria.
5. Recommendations and comments submitted by the coordinated review by the Fire Chiefs of the Victor and Fishers Fire Districts and the Town of Victor Fire Marshal.

DECISION:

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

NOW, THEREFORE BE IT RESOLVED that the application from Don Blanding, The Frame Shop, 6431 State Route 96, Victor, NY requesting a fire sprinkler waiver per the Town of Victor Code §83-4F (2)(a)) for a 20'x36' addition BE APPROVED; and,

HOWEVER, IT IS FURTHER RESOLVED that the following conditions are imposed to minimize any adverse impact such waiver may have on the neighborhood or community:

1. The Fire Service would be accepting of a waiver if the fence on the west side of the building could be removed or repositioned at least 10' back from its current position, to allow better access for firefighters.

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

Michael Reinhardt	Aye
Matt Nearpass	Aye
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Nay

Adopted: 4 Ayes, 1 Nay

3. 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). The

Town of Victor Zoning Board of Appeals, September 3, 2019

property is zoned Commercial/Lt Industrial, is in the 96/251 Overlay district and owned by Edward Angelo.

Matt Tomlinson, Marathon Engineering – Back again, with Paul Colucci representing the ownership. It's been a couple meetings since we've been here because we were tabled going through a coordinated effort for SEQR so I wanted to report back that we did receive a neg dec at the planning board last week for a SEQR determination and also, I'm going to hand these out, but we did make some changes in responding to planning board and town engineer comments which included incorporation of a landscape berm at the south and west corner of the property. So I'll pass that out for you guys to look at.

Chairman Reinhardt – This is in response to which variance.

Mr. Tomlinson – This is in response to some of the comments and concerns that we received from neighbors and town staff just adding some additional buffering to that southeast corner for noise attenuation and visual screening to the building. I'll touch on a couple other things, but first I'll talk about the berm since I just handed that out. This berm spoils from the ponds some of the flood plain mitigation that we are doing on site as part of the project and it ranges in height from seven to ten feet above the finished floor of the building and then we've moved some of the landscape materials to that berm as well to provide additional height, so there's quite a significant buffer being placed at that southeast corner to the west of the end of the existing tree line.

Chairman Reinhardt – Just a quick question before you proceed, when you say seven to ten feet, are you talking about then the height of the trees are seven to ten feet above the roof line?

Mr. Tomlinson – No, the height of the berm is seven to ten feet above the floor of the building and then the vegetation is on top of that seven to ten feet. So it will not fully screen the building, but we're about thirty feet in height at the rear of that building or on that wing of the building so a seven to eight foot pine on top of a seven foot berm or a ten foot berm that's going to be seventeen out of the thirty right when it's first planted.

Chairman Reinhardt – These are all evergreen style trees?

Mr. Tomlinson – Evergreen, there's a couple shade just to mix up the canopies, but most of them are evergreen, yes.

So, the last time we were here, we were requesting five variances and I believe that the board heard from the neighbors quite a bit, heard from us with some responses to several of the questions and there was quite of bit of discussion about proximity. We presented a figure that showed the residences within the radiuses of 500 and 1,000 feet from the facility. And, it seemed like the board was generally in favor of granting four of the five variances. The one that was going to be precluded was request number four, as that was specific to the phase 2 construction where the remainder were necessary for phase 1 construction. I think we had some good dialogue on that and the tabling was really to allow the planning board to have some feedback and what ultimately resulted in a coordinated SEQR review.

Mr. Harter did appear before the planning board a couple of meetings ago to share some of our discussion here with you folks with that board and I think that was helpful to them to wrap their heads around what you were considering as well. So, I know you guys have heard from us quite a bit and seen this several times, so at this point I can just answer questions or if I can't, Paul can I'm sure.

Town of Victor Zoning Board of Appeals, September 3, 2019

Chairman Reinhardt – Ok so when comments, questions, concerns that the board has what I ask them to do if they could isolate which variance or variances that you're asking questions about. What I have in front of me are, there's two resolutions. The first resolution addresses the first two variances, the second resolution addresses the third, fourth and fifth. So, it's going to be very helpful to me is whatever comments, concerns you have if you let me know which variances you are talking about. So, with that, Fred, questions, concerns, comments about the proposed variances?

Mr. Salsburg – I'm a little confused about which variances for which topic. I didn't bring my Horsepower stuff.

Ms. Morley – Can we do one and two maybe?

Chairman Reinhardt – The first variance is a variance to locate a motor vehicle repair facility 100 feet from the boundary of a residential district when 1,000 feet is required. Second, a variance to locate a motor vehicle repair facility 300 feet from a residential use when 500 feet is required. Third, a variance to locate parking 36 feet from the right of way when 80 feet is required. Fourth, a variance to locate parking 76 feet from a residential district when 100 feet is required. Five, a variance to provide 92 parking spaces (4.6 per repair bay) when 120 parking spaces (six per repair bay) are required.

Mr. Nearpass – And now one of those is gone, correct? It's down to four?

Mr. Tomlinson – It was our understanding that the board was not open to considering the phase 2 variance and after.

Mr. Nearpass – So which one is phase two?

Mr. Tomlinson – That's variance four. Variance request number four.

Chairman Reinhardt – So, are you going to withdraw that?

Mr. Tomlinson – That's correct.

Chairman Reinhardt – That makes it simpler.

Mr. Nearpass – So number four is gone.

Mr. Tomlinson – One, two, three and five are what we're requesting approval for.

Mr. Nearpass – And do we have two resolutions because of the addition.

Chairman Reinhardt – It's simpler and to try and keep it – I think one and two seem to want to go together and then three and five.

Mr. Tomlinson – One and two are related to the use, three through five were more the set-back.

Town of Victor Zoning Board of Appeals, September 3, 2019

Mr. Nearpass – There not use variances, right?

Mr. Tomlinson – There not use variances, they are still area variances, but related to the motor vehicle use.

Chairman Reinhardt – Let's start with Scott, since you participated and have been the most active.

Mr. Harter – Yeah I mean I take a look at the requested variances and I don't necessarily separate them in my mind. I look at what you've done here and I think this is very good. I think this is much more expressive of what I think we would want to see and I think the planning board wanted to see by way of buffering the site. I think when you locate the facility like this within a 1,000 feet or whatever the magic distance is, it's all about the impact to the neighbors and by virtue of them going through SEQR and giving you a negative dec, I presume they looked at the impacts and they came to the conclusion that the design you show here is going to do a good job in doing that. And, based on what you just told me with the berm height and the vegetation planted on top of the berms I would have to agree. I think versus the drawing that you presented originally which I think was that one, this is much more detailed and I think I can understand better the extent to what you're buffering or mitigating the environmental impacts of your project. So, I think all the impacts kind of all go together to the extent that how does that all relate to what's happening to the neighborhood nearby and I think you've shown a well buffered. You've situated the building in a location makes sense and gives you a lot of room over on the southwest side to stay away from the residence and the Serenity House as best you can. And, it looks to me like you're preserving the natural vegetation along the south property line, which I also think is a good thing to keep yourself as innocuous as possible. And, I realize that one of the aspects of this project that's been so difficult is that and perhaps the name has something to do with it, Horsepower whatever, it's sort of been counter intuitive to the Serenity House. Something just doesn't quite flow there. But, I think you have done exactly what you've needed to do. So for me I don't really see a heck of a lot of difference in whether or not it's one, two, three and five or all of them together. I think that they all, and SEQR says this, it's really accumulation of all the impacts associated with your project that can be really the one most valuable to consider. I think you've done a good job. I think this represents the best one could do in develop this site. And, I also recall one of Matt's comments when we got into this and talking with some of the members of the public that someone is entitled to go in here and by virtue of being a motor vehicle business you're tripping that 1,000 foot requirement, but I don't think we see many garages for example that are as well designed as this. Those are my comments.

Chairman Reinhardt – Scott, just to clarify the required criteria that we need to go through. Your responses wouldn't be any different as we're going through one, two, three and five, they all be similar, we'll go through them, but what I'm trying to avoid is if we're going through them and the criteria as we lay them out are going to be distinguished between the first and second request for variance and then the third and fifth.

Mr. Harter – I think that because the planning board did SEQR and they did issue a negative dec to a certain extent they've done some of our homework or a lot of our homework for us. They've made it easy for us to not have to second guess some of these items and we have a ruling that we can go with and fall back on that I think would be difficult to contradict. Unless I saw something very different than what I'm looking at right here. So, in terms of what variances go with which motion and what's been done, I

Town of Victor Zoning Board of Appeals, September 3, 2019

think if you want to break it into two motions, that's fine. We may be duplicating some of our statements when we go through the criteria, but I don't see a problem with that.

Mr. Salsburg – How have you left the engine testing machine sound emissions with the town board?

Mr. Tomlinson – With the planning board?

Mr. Salsburg – With the planning board.

Mr. Tomlinson – The same way we left it with you, that at the building permit with full design of the building we'd be submitting supporting materials on the sound attenuations and that kind of thing within the building.

Mr. Salsburg – Well from the town level study would you say that it's no louder than 96?

Mr. Tomlinson – I believe that what we demonstrated in the sound study that that is an accurate statement, yes.

Mr. Salsburg – And every night they are going to put the cars in the building?

Mr. Tomlinson – I think that they would quickly lose business if they left any of these cars outside.

Mr. Salsburg – Well that keeps in from, in my imagination, that keeps it clean for the evening.

Mr. Tomlinson – Yeah and just to restate their hours are 9 to 5 Monday through Friday, so there's no evening hours or anything like that.

Mr. Salsburg – I don't put an awful lot of weight on the sound for the residential area because compared to the anything I can think of, it's a long ways away. The Dorchester Park street is quite a ride to get there and it circles away from it. So, those are the only two things I was concerned about that they are going to be handled, the noise and nothing outside.

Mr. Nearpass – I concur with what Scott and Fred have been saying. I think any noise concerns if there really were any, at least from my end of it, have been mitigated with the landscaping strategy. To dampen that, I think the applicant's done a good job of trying to negotiate with all parties to come to a mutually agreeable or at least the best choices to mitigate the public's concerns, so I'm ok with this.

Ms. Morley – I think we've covered all avenues on this and I'm in agreeance with all the comments.

Chairman Reinhardt – If you know, I've certainly been replaying this in my head a number of times and I was impressed with the owners invitation to anyone from the public to come out and see the operation, anytime, as long as he was there. And he seemed to be sincere, just c'mon and I'll stop what I'm doing and I'll show you. Do you know of anytime that any one, whether the public or somebody else, came out and accepted his invitation for a tour?

Town of Victor Zoning Board of Appeals, September 3, 2019

Mr. Tomlinson – I believe a Zoning Board member did, but I don't know of any public.

Mr. Salsburg – I did. It's a clean shop.

Chairman Reinhardt – So that in my mind to open the doors of a current operation and to dispel any concerns of any body from the public that it's going to be too loud or whatever the concerns were, holds great weight in my mind.

Mr. Tomlinson – And, I did have a chance to speak to one of the neighbors that we do some work with at their place out in Macedon and he said that he saw the berm at the planning board and was very happy with the result. He didn't speak for all the neighbors, obviously, but that was one neighbor that I did speak to.

Chairman Reinhardt – I'm comfortable in saying that there was more than one occasion when I know someone who spoke against pulled me aside outside of the meeting and asked what am I going to do. And certainly I'm not going to answer that question, we decide here and now. But what I did ask him did you accept his invitation to go and check out the operations, after repeated invitations. He said nope, I haven't done that. Then, he's lost an opportunity. With that anyone from the public want to speak for or against the application? Before we press on.

Alright, if I understand, is this a proposed buffer? Is this something the planning board wanted you to do that you spoke earlier in the presentation?

Mr. Tomlinson – We incorporated it in addressing some of the planning board's comments as well as what we heard from the public and from the zoning board.

Chairman Reinhardt – So, you'd be comfortable, and I think the board would probably would, if there were conditions that that would be added to a condition?

Mr. Tomlinson – Specific to the berm?

Chairman Reinhardt – Right.

Mr. Tomlinson – It was included in the revised plan package that we have before the planning board for approval.

Mr. Harter – You could probably reference this drawing?

Mr. Tomlinson – It's on file with the town, through the planning board response, so.

Chairman Reinhardt – Alright, before we go through the criteria, anybody want to add concerns, comments, conditions, proposed conditions?

Mr. Harter – I just had a question. In our discussions a couple meetings ago you indicated that when the facility is going to have some gatherings of car people shall we say or whatever that may be, that you

Town of Victor Zoning Board of Appeals, September 3, 2019

would be willing to notify the town or get some type of permission from the town or I can't recall exactly Paul, I think you were the one that made the offer. Are you still willing to do that? Is that still something that was brought up with the planning board? Is it gone away or what's your thinking on that?

Mr. Colucci – The planning board didn't get into discussion relative to the car shows or the events. We spoke more about that here as the director of operations offered that up, that they do hold a couple car shows a year.

Mr. Salsburg – I think they just had one last weekend. And, nobody noticed. Nobody knew it.

Mr. Tomlinson – September of every year.

Mr. Colucci – And, what we discussed here was if they were to do anything outside of their building, put up a tent or something of that nature they would have to apply for a permit for a tent, besides that I don't know if Al knows of any other type of permit that would need to be secured to hold that type of car show. They were willing to apply for whatever or even as part of being good neighbors notify the town of when these events could be.

Mr. Harter – Is that another item Al, where we should let the code be the code?

Mr. Benedict – Probably yes.

Mr. Harter – Probably yes, ok.

Chairman Reinhardt – Let's go with that. Alright, so walking through the criteria and I think what's going to happen is as we walk through the criteria for the first, the second proposed variances, the justification is going to mirror the third and the fifth. I think we're all in agreement the fourth proposed variance has been withdrawn.

Mr. Benedict – Can I get clarification on number four? So, if you ever come back in for phase two, does that mean you'll be coming back for that variance?

Mr. Tomlinson – That's correct. We can't expand the building to the east at all without encroaching in that 100 feet. The pavement limit is right at that 100 currently. So we would need to come back in for it.

Mr. Benedict – So is the planning board going to have you coming back in to approve the second phase as well?

Mr. Tomlinson – That's a good question. We haven't discussed that with them.

Mr. Benedict – Where I'm going, I'm trying to figure out how would the planning board approve phase two if you don't have a variance approved for it?

Mr. Colucci – That's a great question, Al. What we were trying to do with this board was convey to you that their intent is to build phase one and that much like Matt started with leading the conversation if there

Town of Victor Zoning Board of Appeals, September 3, 2019

is concerns that they are not living up to what they said they would do, the neighbor concerns continued to be something that haven't been satisfied and if we ever go to expand we would need to come back before this board for another variance. That was really an agreement we made with the ownership group to satisfy this board in granting the variances. What the planning board is going to grant is the ability to construct a building up to some certain size, I think it's 64,000 square feet total. We would likely have to come back to them for a minor modification of a site plan approval. We'll go for an overall approval, but the phase one is what the planning board will be acting on and if we go to expand the building we'd come back to them for some minor modifications.

Mr. Nearpass – Right, now you've got it posed to them as phase one and two? The whole thing has been submitted as one and two.

Mr. Colucci – Just because they've got to see the design.

Mr. Nearpass – I know, that's smart. I probably would have done the same thing.

Chairman Reinhardt – Ok, we're good? Any other concerns? Questions? Very well, looking at the criteria for the first and second variances.

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: As Scott has pointed out this has been thoroughly reviewed. We've had public hearings. Looks like July 1st and 15th, August 19th, September 3, as well as a review from the planning board and especially with the applicant coming in and with the new drawings of increased buffering and berms that there would not be a change in the character of the neighborhood. There is also a negative declaration on SEQR. As Scott pointed out, in some they have done our homework for us and their findings help us with the criteria. Any further additions to the first justification?

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

You pointed out earlier, and also what SEQR has said. It's an unusual piece of property. Also, Matt pointed out, some other business could go in there and this applicant has done a very good job of that making structure and placement as palatable as possibly can for the area. Anyone want to add anything else to the second criteria?

Mr. Harter – I would just add, as Matt indicated, it's basically because of the use of the building. Because it technically falls into a repair facility that they are subject to a very conservative piece of the code which speaks to the 1,000 foot separation.

Chairman Reinhardt – It's a higher standard.

Mr. Harter – It's a higher standard and that's created a lot of this analysis I think, but I think you have been able to show good mitigation this way.

Chairman Reinhardt – Very good. Third, the requested area variance is substantial.

Town of Victor Zoning Board of Appeals, September 3, 2019

Given the distance from the residential property, I don't know of any other way we can call that that it is substantial. Anyone want to add anything else or comment to the third criteria?

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

Scott correctly pointed out SEQR took a hard look at it and I didn't see anything that indicated that there was going to be any adverse effect impact on the physical or environmental conditions in the neighborhood.

Mr. Harter – Agreed.

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.

The only condition that I'm hearing so far unless there are others is that the proposed buffer that was given to us today, two drawings specific the landscaping plan C4.0 is followed through with. Anything else whether it be the conditions, justifications or conditions to these two proposed variances?

Hearing none, I will entertain a motion to the first and second variance.

Mr. Harter – So moved.

Ms. Morley – Second it.

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

We're in agreement then that we are only reviewing the third and fifth variance. The fourth has been withdrawn and if the board is comfortable with it, all the criteria that we've laid out for the first, second, third, fourth and fifth are identical to the first and second now granted variances. Are we in agreement with that?

Board – Yes.

Chairman Reinhardt – Any further additions? Very well. Entertain a motion to approve the third and fifth variance.

Mr. Salsburg – So moved, that we approve the third and fifth variance.

Mr. Nearpass – I'll second.

Chairman Reinhardt – With the same conditions?

Mr. Salsburg – With the same conditions.

Chairman Reinhardt – Very good. All in favor? (Aye) Opposed. (None).

Motion carried. Thank you so much for your cooperation, patience. Good luck.

Mr. Tomlinson – Thanks.

Town of Victor Zoning Board of Appeals, September 3, 2019

RESOLUTION: Horsepower Motorworks, 1256 Brace Road, Appl. No. 20-Z-19

At a regular meeting of the Town of Victor Zoning Board of Appeals held on September 3, 2019 the following resolution was adopted:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on June 17, 2019 from Marathon Engineering on behalf of Paul Colucci, The DiMarco Group and ANAC Holdings, LLC; and

WHEREAS, the applicant is requesting area variances to §211-24A(9)(b) and §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; and,

WHEREAS, said application was referred by Martin Avila, Town of Victor Code Enforcement Officer 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 June 23, 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 a Type I action under the State Environmental Quality Review Act and the Town of Victor Planning Board initiated the Lead Agency coordination process by resolution on August 13, 2019; and, identified no potential significant adverse environmental impacts with the proposed Project and hereby issued a Negative Declaration; and,

WHEREAS, the Ontario County Planning Board assigned the referral as a Class 1, referral no. 131-2019, and reviewed it on July 10, 2019 stating it was to be returned to the local board with comments; and,

WHEREAS, Public Hearings were held on July 1, July 15, August 19 and September 3, 2019 at which time 13 residents spoke against and three letters were received 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: This project has had a thorough review with four public hearings of the zoning board, planning board review and a negative declaration on SEQ. There have also been new drawings submitted with increased buffering and berms.

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 an unusual piece of property. Applicant has done a good job in making structure and placement as palatable as possible for the area. Another business could go in this location, but because this is classified as a motor repair facility, project is subject to a higher standard of the code, which speaks to the 1,000 foot separation. Good mitigation by applicant.

3. The requested area variance is substantial.

Town of Victor Zoning Board of Appeals, September 3, 2019

Justification: Due to the distance from the residential property.

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

Justification: A negative declaration was issued on SEQR. This board didn't see anything that shows the project would cause an adverse effect on the physical or environmental conditions in the neighborhood.

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:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application 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, BE APPROVED:

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

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

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

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

Approved: 5 Ayes, 0 Nays

RESOLUTION: Horsepower Motorworks, 1256 Brace Road, Appl. No. 20-Z-19

At a regular meeting of the Town of Victor Zoning Board of Appeals held on September 3, 2019 the following resolution was adopted:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on June 17, 2019 from Marathon Engineering on behalf of Paul Colucci, The DiMarco Group and ANAC Holdings, LLC; and

WHEREAS, the applicant is requesting area 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. Also, requested is reduction from 120 parking spaces (six per repair bay) per §211-32B to 92 (4.6 per repair bay); and,

Town of Victor Zoning Board of Appeals, September 3, 2019

WHEREAS, said application was referred by Martin Avila, Town of Victor Code Enforcement Officer 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 June 23, 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 a Type I action under the State Environmental Quality Review Act and the Town of Victor Planning Board initiated the Lead Agency coordination process by resolution on August 13, 2019; and, identified no potential significant adverse environmental impacts with the proposed Project and hereby issued a Negative Declaration; and,

WHEREAS, the Ontario County Planning Board assigned the referral as a Class 1, referral no. 131-2019, and reviewed it on July 10, 2019 stating it was to be returned to the local board with comments; and,

WHEREAS, Public Hearings were held on July 1, July 15, August 19 and September 3, 2019 at which time 13 residents spoke against and three letters were received 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: This project has had a thorough review with four public hearings of the zoning board, planning board review and a negative declaration on SEQ. There have also been new drawings submitted with increased buffering and berms.

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 an unusual piece of property. Applicant has done a good job in making structure and placement as palatable as possible for the area. Good mitigation by applicant.

3. The requested area variance is substantial.

Justification: Due to the distance from the residential property.

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

Justification: A negative declaration was issued on SEQ. This board didn't see anything that shows the project would cause an adverse effect on the physical or environmental conditions in the neighborhood.

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:

Town of Victor Zoning Board of Appeals, September 3, 2019

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application requesting area 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. Also, requested is reduction from 120 parking spaces (six per repair bay) per §211-32B to 92 (4.6 per repair bay), BE APPROVED:

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

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

Approved: 5 Ayes, 0 Nays

Chairman Reinhardt and the board discussed the Zoning Board of Appeals chair and vice chair terms. The town board will be notified of the board's decision to continue with Chairman Mike Reinhardt and Vice Chair Matt Nearpass.

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