

Town of Victor Zoning Board of Appeals, October 7, 2019

A regular meeting of the Town of Victor Zoning Board of Appeals was held on Monday, October 7, 2019 at 7:00 PM 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; Scott Harter; Fred Salsburg

OTHERS: Lisa and Greg Ostrander; Al Benedict, Town of Victor Code Enforcement Officer; Kim Reese, Secretary; Ed Kahovec, Town Board liaison

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 September 16, 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

Chairman Reinhardt – You’re first. You must be Mr. Ostrander.

Mr. (Greg) Ostrander – Did you want me to stand at the podium?

Chairman Reinhardt – Yes, please. So, we have your application. You are looking to construct a 10 foot high fence. The code requires, at least permits, six foot. Sounds like you’re making a basketball/tennis/soccer area in your backyard.

Mr. Ostrander – Correct.

Chairman Reinhardt – You have, looks like, eight letters from your neighbors seemingly that they are OK with that. Anything else you want to add or tell us about what your project is? And again what the criteria, what we’re looking for is that it’s not going to change the character of the neighborhood, and whether or not you have some other feasible means you can do this. Whether or not it’s substantial, whether or not it’s going to create a physical, environmental condition or negative impact and whether or not it’s self-created. So, with that anything you want to add or touch on more than what you’ve put in your application?

Mr. Ostrander – Yes, basically, I designed this court and it is elevated a little bit off the ground, so there’s about a six or eight inch fall off from the edge of the court, so it definitely needs a fence around it otherwise it could be a dangerous type court. It was suggested by the woman, which is Sports court, a representative for Sports court. These are designed all over California. They’re not as big in this area because they are pretty pricey. This whole court is basically going to run around \$70,000 to put in. The

concrete pad is already poured. Everything else is up to code and Mauro Polidori who is the builder of the house originally, that we're purchasing the house from, he is the one that's done all the building of the court and he doesn't really cut any corners. So we have explored other measures of trying to put some type of ball containment system around. The problem I was having is I'm putting in soccer goals on the end of the court which my son plays soccer. My daughter plays lacrosse. And when you play soccer obviously a normal soccer goal is 9 feet tall. I'm not putting in these monstrosity type goals. I'm putting in about a four and half foot high goal, 9 foot wide and when you blast the ball with your foot, if you miss the goal the one end of the court is open with a valley which runs toward the road. Toward Valentown Road. I don't want a ball to go flying down that way or even have the possibility of going near the road if someone hits a hard shot and misses the goal. So we explored the idea of going with a six foot fence. A six foot fence would only put the fencing one and half feet above the actual soccer goal which isn't very much. So we needed to go with a ten foot high goal. I'm not sure if I submitted the paperwork of the pictures of the black fencing that we're putting up. That's the fencing we would like to put up and aesthetically it looks very nice. It is hard to see. I also this weekend went around the outside of the road of Valentown Road and Jillian Rise and I took a ten foot pole. I went to Home Depot and I bought a ten foot pole, put a yellow arrow at the top of it and put it in the front left corner of the court which would face Valentown Road. In order for you to see what you can actually see anywhere on Valentown Road and anywhere on Jillian Rise. Other than the little valley that goes in through about 30 feet from the entrance of Jillian Rise down Valentown Road you can only see the yellow arrow which is about 6 inches tall of an arrow, all along the top. I have pictures of it to show that even at 10 foot high you can't see this fence. You're only going to see the top six inches of the fence anywhere on Valentown Road and on Jillian Rise you're going to see about three feet of fence at the most and I have pictures of these here if you'd like to see.

Chairman Reinhardt – Yeah I would. Absolutely I'd like to see them.

Mr. Ostrander – This is the first picture I took which was right in front of the court itself. And then I have as you're going down Valentown Road and then I have the Jillian Rise ones further down.

Chairman Reinhardt – So, these arrows that you're indicating on your exhibits that's 10 feet?

Mr. Ostrander – Yes. That's the pole there. That's actually an 11 foot pole, so I have about a foot gap here and this is 10 feet high. That's all you're going to see is the top of the arrow and if you see the other pictures, the arrow actually gets shorter.

Chairman Reinhardt – These photos are taken from Valentown Road?

Mr. Ostrander – That's me walking down Valentown Road, not in the yard at all. And then the other ones that you'll also see at the entrance of Jillian Rise.

Chairman Reinhardt – Can we keep these?

Mr. Ostrander – Yes of course. And there's also Jillian Rise photos. The other thing I was going to say is the one end of the court because Mauro built this house, he has a walk-out basement which is where this court is being placed right outside the walk-out basement there's about a six to seven foot elevation difference between where my house actually sits and down below where the beginning of the walk-out basement comes and goes as high as nine feet on the one end of the court, so if you look at the one picture at the end of the court you'll see that I'm putting a six or seven foot retaining wall at the end of the court so we're actually below grade on probably three quarters of the court. The only part of the court that's

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actually going to have ten foot of actual fence is going to be on the very beginning of the court on the one side toward Jillian Rise.

Chairman Reinhardt – Just for our record you’ve given us fourteen additional photos. I haven’t counted but there’s a number of them with an arrow on a pole that you’ve stated, indicating that pole is from the base to the top of the arrows, 11 feet high?

Mr. Ostrander – Yes, I put it down at the bottom of the concrete which the fencing is going in the concrete. It’s getting mounted in the concrete, so I had to subtract the foot of pole and then you can see 10 foot pole from the concrete up.

Chairman Reinhardt – I don’t want to cut you off so, anytime there’s more just let me know. But on the piece of criteria of whether or not it’s going to be achieved by some other method. Have you thought about a six foot fence and then additional poles that would allow fencing? Often times you might see them at hockey arenas. It’s a mesh fiber, that if a ball hits it or something hits it, it’s not necessarily a hard metal fence, but more of a synthetic.

Mr. Ostrander – A netting.

Chairman Reinhardt – A netting, right.

Mr. Ostrander - Similar to what they would put in baseball batting cages. We did to explore that also. The woman for SportsCourt actually sells those. The problem is that would work fine in a basketball court and a tennis court because the ball just hits the net and comes back down on the court which is great, but we’re going to be playing soccer and there is no out of bounds so we’re using a chain link fence, it’s actually a vinyl fence they call it, in order to use the fence as part of the court itself. So if you were to hit into the netting it wouldn’t have the same effect as hitting it off a wall which is essentially what the sport court fencing is going to be for us.

Chairman Reinhardt – Al, just to touch base on it, how does the code treat that? If it’s a six foot fence and there are poles let’s say on the corners that go up ten feet and you put a fiber mesh, is that permitted? Would that also count as needing a variance?

Mr. Benedict – I would consider that a fence, needing a variance.

Chairman Reinhardt – So whether it’s metal or, ok, alright. Anything else you want to add before we ask some questions?

Mr. Ostrander – No, I think that would be it. Thank you.

Chairman Reinhardt – Donna, have any questions?

Ms. Morley – The letters signed by the neighbors were all in favor?

Mr. Ostrander – Yes, I took my wife and my daughter, my son was unavailable at the day he had a soccer game. But we went around to the neighbor’s together. I wanted to meet the neighbors and introduce ourselves and let them know we were moving in towards the end of this month, but we wanted to make sure that if anybody had a problem with it, we kind of wanted to address their concerns. Truthfully, most of the neighbors, the only neighbor that it really effected was a Valentown Road neighbor straight across from our house on the Valentown Road side. That was an older couple. Couple of retired state troopers

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as a matter of fact and I'm actually retired from the sheriff's department. I quit actually, I don't want to say I retired. But we actually knew of each other only through his wife, but basically he is the only person of the neighbors that has a visibility of the entire side of the yard. And he had no problem with it at all. As a matter of fact, she has a 15 year old granddaughter who plays lacrosse also, who lives in the area and she was actually excited about us putting it up. And several of the neighbors already have kids, too and we reached out to them, letting them know if anybody wants to enjoy the court with us when we're there, we have no problem with that. So we had no, there was not one person that even asked the question. I pretty much explained what was going on, I showed them pictures of it and everybody was in favor of it.

Ms. Morley – And, have you closed on this house yet?

Mr. Ostrander – We have not closed on it. We have the purchase agreement in place. The closing is probably going to be, we're going out of town for a lacrosse tournament down in Maryland, two of them on the 20th of October and also on the first of November. Our closing on the house is actually the third of November, but we're taking a prepossession agreement on the 23rd of October. Mauro also, the owner, the current owner of that house also submitted a letter, should have submitted an email you guys stating that we are buying the house and everything is approved and he is ok with the project himself. He's actually building it for me.

Ms. Morley – Kim, do you have one of those?

Ms. Reese – Yes, and I think I added it to your packet. It's right in the beginning.

Ms. Morley – Ok, I didn't see it. Ok, that's all the questions I have. Thank you.

Mr. Ostrander – No problem.

Mr. Nearpass – I have a very similar court in my backyard as well, mostly for basketball. I think your neighborhood is probably more forgiving than mine. One of my conditions was to just not be able to put a fence around it. But from going from six to ten, you really feel that's going to really make much of a difference all the way around. Normally, I'm assuming it's like indoor soccer, where it's like the felt soccer ball or is it a real soccer ball?

Mr. Ostrander – It's a real soccer ball.

Mr. Nearpass – You're usually using it to pass off of, that's why you wanted more of a hard, more rigid surface on the side, but do you need that all the way up to 10 feet?

Mr. Ostrander – Well that's the problem on the one end of the court, the goals themselves are four and a half feet high, so if you put a six foot fence up you only have a foot and a half before you miss the actual fence itself and then it could roll toward Valentown Road and that's why it was suggested by Holly to put up the 10 foot fence. I reached out to several realtors in the area, to find out if anybody else had 10 foot fences in Victor and I got three of them actually. Might even be in my pictures there, that have 10 foot fences already in Victor and they only have tennis courts and if we were just playing tennis it wouldn't bother me as much, but when you're blasting soccer balls. My son can boot a soccer ball 50 yards.

Mr. Nearpass – It will go over the 10 foot fence. 10 foot fence is only as good as an 11 foot kick, right?

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Mr. Ostrander – Agreed, I just didn't think that one and half feet above the soccer goal was going to be enough. We could be chasing balls all day and maybe even cause a car accident if this kids boots it too hard or anybody does for that matter. So on the ends of the court, most definitely the 10 foot fence is required in order for this sport to be played properly. I think I submitted three addresses in there of 10 foot fences that are already located in Victor.

Mr. Nearpass – I saw one of them. There was a picture of one of them. It was tennis court.

Mr. Ostrander – Yes, they are basically tennis courts which in my opinion, the tennis court is another sport, I guess, if they are playing tennis if someone blasts a shot it could go over a six foot fence, but not the 10 as much.

Mr. Nearpass – No more questions for me.

Mr. Harter – I think there are a couple of things that I notice that I think speak favorably about the application. One is from the aerial photograph and having driven by you can see there a number of recent tree plantings that have been planted on this property, on this parcel and it's a relatively new piece of property I think.

Mr. Ostrander – Five years old.

Mr. Harter – Right. And so, if you take a look at it versus the property on the other side of the street, 6919, you know it's going to in time provide even greater visual buffering to anyone who might be offended by this. So I think that speaks in favor of what you're doing. Another thing that speaks in favor of what you're doing as I look at the photographs of your actual construction of the slab is that you've recessed it into the slope at least on one side, you know significantly, so that it's not really higher in terms of grade then it needs to be. It seems like you've tried to nestle it.

Mr. Ostrander – It's in a good six or seven feet on the one end, where the fence is only going to be above the actually grade about three feet.

Mr. Harter – Right, because when I looked at your yellow arrows, I thought geez, that doesn't look like 10 feet to me when I look at it, it looks much lower than 10 feet. So I think whether it's because of construction logistics or perhaps site development intelligence, I'm not quite sure, whatever the reason it seems like you're imbedded into the hill here a little bit and I think that minimizes the impact to the overall neighborhood and the aesthetics and what have you. So, I think that speaks favorably for what you're doing. I have no questions beyond that I understand what're you're trying to do. I understand why you are trying to do it.

Mr. Ostrander – Thank you.

Mr. Salsburg – I think you covered it good. I agree with Mr. Ostrander's analysis of the visual impact. I drove by it and I don't have very much hesitation to approve it. There's only the one section there's a drain there. You can see it a few feet from Valentown Road. I didn't think you could see it at all from Jillian Rise. It couldn't be in a better spot.

Mr. Ostrander – I could actually add to that if you'd like? The French drain that comes out, the only spot you actually can see about a 10 foot section of that fence if it goes up is that it's only 10 foot wide, there's actually a pine tree on the French drain hill and not on the other side. If that ever became an issue I'd have no problem planting staggered trees on the French drain one side and then the other where if

someone was driving on Valentown Road that little 10 foot section then you would see nothing. All you would have to do is plant two more firs, which is not a problem at all. If that's what it's going to take to possibly close off all visibility of the fence.

Chairman Reinhardt – Any other questions, Fred?

Mr. Salsburg – No.

Chairman Reinhardt – Lighting.

Mr. Ostrander – Lighting, we did sit down with is it Sean, the guy that works in this office? We sat down with him and a guy named Jimmy Calisino. They own a lighting company out of, I guess it's in Newark. He has come and done all the proper measurements for everything and we sat down with Sean here one day in the afternoon to make sure we passed all the codes. There were not as many codes for lighting as there is for fencing which I found interesting only because you could have a 20-30 foot pole of lighting out there and it doesn't fail any of the zoning laws you had as long as you have the glare shooting straight down. I mean, for us it seemed a little crazy that I would think...

Chairman Reinhardt – You might be exaggerating a little bit. There are code requirements. There's dark sky compliant. I don't think you can have a 30 foot pole in your backyard with lights on it. That's not going to happen.

Mr. Ostrander – Well Sean was the guy that directed us and basically said we fell within all codes. We don't have a 30 foot pole, by the way.

(Laughter)

Chairman Reinhardt – Ok, good.

Mr. Nearpass – How tall is it?

Mr. Ostrander – It is 20 foot, which is 10 foot above the (thing). It has pancake lights. And there's certain amount of feet it has to be off of the road in order to not be obstructed by any cars coming down the road and we're more than that distance. That's what Sean said the coding was. It was more of a distance and the angle of the lighting.

Mr. Nearpass – I'm looking at Al because I thought there was a height requirement, I remember going through this myself.

Chairman Reinhardt – Al, are you ready or I've got another question for him? Do you have hours of operation, you want to keep the lights on?

Mr. Ostrander – We realized the zoning, the hours of operation for Victor they have to be off by I think by 11 pm during the week and I think on the weekends you had until midnight. My son doesn't live with me, my son lives in Greece, so I only get him on the weekends and my daughter does live with me full time and it's like with anything else, anytime you build a project you think you're going to be out there all the time, you're never out there. So, the fact is we probably would use it on the weekends more with family being out there past midnight on a weekend night is probably not going to happen, maybe a couple times a year. I don't anticipate there being much use of this court except for me during the daytime with basketball and most of the kids during the daytime. I really don't see this as being, my daughter is 11, my

son is 14, and I don't see us being out there like midnight with a crazy amount of people out there playing sports. It's kind of like not normal.

Chairman Reinhardt – I'm going to ask the rest of the board, but I'm thinking to cut those hours back. This is a neighborhood, this isn't lighting that's on your garage. Twenty feet up there's a bunch of big asks here, so to have something during the course of the week. Right now off the top of my head, 9:30 weekend, 10:30. I'd like to hear what the board has to say about that, but midnight that's big push. You're in a neighborhood and I can appreciate that this is an arguably an expensive neighborhood and I understand you're putting a lot of effort and a lot of money into it and it sounds like you did your homework. The neighbors seem to be ok with it, but there are limits. I think if you have those lights on at 12 at night you're going to start irritating your neighbors.

Mr. Ostrander – Yeah, we're not looking to irritate our neighbors that's for sure.

Chairman Reinhardt – Al, did you find anything out?

Mr. Benedict – It says the limitation is 15 feet in general. What it says here is if it's 10 feet or higher it must be extinguished by 10 o'clock. There's no distinction between day of the week.

Mr. Nearpass – You said the height limit was 15?

Mr. Benedict – 15, yes.

Chairman Reinhardt – So, he can have 15 feet, but he must have lights off 10pm, Monday through Sunday.

Mr. Benedict – If it's more than 10 feet high, yes.

Mr. Harter – And it has to be dark sky compliant, right?

Mr. Benedict – Correct.

Chairman Reinhardt – Alright, so, with that.

Mr. Ostrander – We have a problem.

Mrs. Ostrander – Wait, can I ask a question? I just want to clarify something.

Chairman Reinhardt – C'mon up and tell us who you are.

Mrs. Ostrander – Lisa Ostrander. I'm a little bit confused by what you said. It can be above 10 feet, but the lights need to be extinguished at ten o'clock? So, 20 feet . . .

Mr. Benedict – If it's 10 feet or higher, it has to be extinguished at 10 o'clock.

Mr. Nearpass – But no more than 15.

Mr. Benedict – But you can't have more than 15.

Mrs. Ostrander – Oh, but no more than 15?

Mr. Benedict – Correct.

Chairman Reinhardt – If you want something higher than 15, you need another variance for that.

Mr. Ostrander – It looks like I'm going to have to do only because I've done, we've done extensive research on this court for the base; the size of this court is 40 x 70. I had to go and spend, we sat down with Sean for probably a two hour meeting here one day. He went over everything. And we told him exactly what we were going to do. I ordered these lights for 10-12 grand. I think it's 12,000 dollars. And basically he had to do a biometrics of the court in order to see if the lights were going to cover all the corners of the courts so people could see and not run into the fencing we put up, get injured, whatever. We had to do a biometrics graph on the entire court in order for the lights to be property situated. So, I had to order to extra light poles which I didn't want to do. They are actually five grand for two of them. So, the whole job is about 12,000 with the lights. On top of the light poles I had to get 45 degree angles because they had to be dark sky compliant. We also had to do a measurement from the edge of Valentown Road out to the actual light poles and make sure we were far enough off of the road for this type of lighting. Sean said we could have went up to 20 foot poles, which is what I needed in order to cover. We already poured the concrete for the floor bases of the anchors for those light poles in order to cover this property and I didn't even order the lights until after I had the meeting with Sean to make sure we were compliant. So I guess I don't want to throw anyone under the bus, but I kind of like purchased things all based on making sure we were going to be up to code and he actually; I'm not sure what the book or bible you guys are reading over here, but he was into a book too and it's not exactly what he read so I'm a little nervous that we got steered wrong and now I have all these lights that are ready to go up, but obviously the code didn't seem as stern as long as we were far enough off the actual road which we were clear of that.

Chairman Reinhardt – Alright, so let me address a couple of concerns you had. Sean's not here, that book is here. That's a code enforcement officer and I'm going to trust that what he's reading and telling us is the code, so that's what we have to go on. And Sean not being here, I'm not suggesting that you're lying, but this is the classic example of hearsay. That is you're offering somebody else's word that's not here. So that really can't give us a whole lot of weight. Putting that on the table for a moment, we also have a request for a variance. You've already started the pad which is a bit problematic because you can have the pad there, you can have a court there but you didn't put the fence in, so that's good. Problem is sometimes we have is that people start to do the project and then realize oh, I need a variance and then they say, well we've already started the project, we can't undo what we've already done. That doesn't necessarily hold true. This board can say, well move it, do something different. It's not happening here. I think everything is working in your favor for this 10 foot fence. The problem that you're having here is well it sounds like you ordered the lights. I don't know where the lights are right now and in some ways it doesn't matter, if they are here, on route, things can change if you will. You can take back orders, so it's not a done deal.

Mr. Ostrander – I understand. And I didn't start the project or order the lights prior to speaking to Sean. We wanted to make sure we were following the code. That's why we sat down here with him and another gentleman in lighting to try to make sure we followed the code before ordering expensive lights. And once I thought we had the ok, we didn't need a variance for it, that's why I purchased them. So, I'm not trying to throw, you say it's hearsay, but I did not start that project before I talked with Sean and Jim.

Chairman Reinhardt – And then often times when people say something like that, well Sean said this, or this one said that, the code book is a public record. You certainly have access to it. You could have read it, you could have looked at it, you could have sought counsel for it and have counsel or somebody that

has the wherewithal that knows how applications are done and how variances are granted. What do I do? How do I do it? Am I in code compliant? Do I need a variance? So, some of this onus needs to fall on you. It's that adage that ignorance of the law is no excuse. It's there, it's in front of you; you could have read it.

Mr. Ostrander – I did sit at the table with him opening a book, reading it to us and showing us. I'm not trying to like say . . . is he not part of the zoning board here?

Chairman Reinhardt – If you spoke to him in the capacity of a code enforcement officer, yeah he is our code enforcement.

Mr. Ostrander – Yeah, I felt like I sat down with the proper individual to give me the right direction. I didn't do this on my own.

Chairman Reinhardt – No I get it. There's a problem. There's some disconnect. There's some miscommunication. Something, you heard one thing, he may have said. I don't know I wasn't at the meeting, so I can't iron it out any better than what I have. What I'm hearing in the code is saying that you can have anything more than 15 feet you're going to need a variance and if it's over 10 feet it's got to be out by 10. So no matter how we look at it, we can keep chasing the dog's tail all we want. You're going to need a variance if you want those lights higher than, is 15 feet the max? It's up to.

Mr. Benedict – The code says light fixtures heights must not exceed 15 feet from the ground.

Chairman Reinhardt – OK, so anything more than 15 feet you're going to need a variance.

Mr. Ostrander – OK.

Chairman Reinhardt – And, if you're asking for the lights to be on beyond 10 pm you're going to need a variance. You can package them in to one application. They are two separate variances, but you can package them in. And, also sometimes people maybe miss a little bit is, they think that a granting of a variance is just for them, but the language is, it runs with the property, so no matter if you're there a month or fifty years. Great if you're there 50 years, but that variance will always stay with the land no matter if you live there or not. Whoever the next property owner, that variance stays. So, the board is very careful about granting a variance even though your needs are for your kids and it makes sense. It also has to fit for the neighborhood, for the next owner and so on and so on. Does that make sense?

Mr. Ostrander – OK. No, I completely understand.

Chairman Reinhardt – So we're careful on granting variances. With that, any other questions?

Mr. Ostrander – No, I'm just thinking. Sorry I'm a little rattled here.

Chairman Reinhardt – I understand. I have to formally ask, anybody from the audience want to speak for or against it? Nobody's here.

Mr. Harter – Should we table his application?

Chairman Reinhardt – We can. Can he supplement? I'm trying to think of the procedure. We certainly can take care of the variance now but if he modifies the variance is he going to have to pay another application fee for the lighting?

Mr. Benedict – That would be up to others to decide that. Start with the supervisor of our department. The fee pays for advertising.

Mr. Ostrander – I don't have a problem with the fee, trust me. That's not the problem. This court – I got way bigger bills in front of me for this court than \$100. I appreciate it.

Chairman Reinhardt – We're trying to keep this as efficient for you, for us, as we can and keep your project moving. So, does the board have any other questions or concerns? There would be buffering. I think we're addressing the lighting issue.

Mr. Nearpass – Other than the lighting issue?

Mr. Harter – We can vote on the variances currently proposed to us with the understanding of the code the way Al recited it. And then I suppose under a second variance application he could come in for the 20 feet.

Chairman Reinhardt – So, one of the conditions will be that any lighting that's attached to the court must comply with the code. It doesn't mean then. It's going to encourage you, it should encourage you then to apply for another variance for both the lighting height and if I understand you right you need a variance for the lighting height and the time of day. And don't misunderstand the board on it's a done deal, it's going to be granted. We're going to go through the same procedure, same process of whether or not it's going to change the character of the neighborhood and those kinds of things.

Mr. Ostrander – Not a problem. I'll apply for both variances. I do have one question about the lighting then. If I have, I'm trying to picture this. If we have a walk-out basement that's six or seven feet at least, maybe eight feet below grade of the front door of my house, we're putting this in that valley. Do you go by where the land is actually right down there, no matter what?

Mr. Nearpass – I think it's from the ground.

Mr. Ostrander – It's a walk-out basement that they had to dig into the ground in order to put the basement in, so we're sitting down in this eight foot bowl essentially. So when you actually put in the lighting, you're on a lower grade than what the front door of the house is by a long shot or even headed toward Valentown Road from the actual court itself.

Chairman Reinhardt – Is that where the pole is?

Mr. Nearpass – You showed where the pole is 10 feet, you're going to be ten feet higher than that with four other poles, right?

Mr. Ostrander – What do you mean?

Mr. Nearpass – You showed us a picture with the pole from Valentown, where you could just barely see the top of the fence. So you're going to ask to be ten feet higher than that with four light poles.

Mr. Ostrander – Correct. Which technically if you go by the grade of the land around the house. The grade of the land, there's a hill out there. It's about 9 feet high on the outside toward Valentown Road.

Mr. Nearpass - I think it's probably to your advantage that we use the ground level, right?

Chairman Reinhardt – If the measurement that you’re taking for the pole is where the pole is going to go. So in theory what we need to figure out is what is that going to look like aesthetically. What do you want a 20 foot pole? Where are you going to place it? Not taking a measurement in a lower grade because that’s convenient. You’re not going to put the pole at the bottom step of your egress, right?

Mr. Ostrander – That’s where the court is it’s down at the bottom.

Mr. Nearpass – It’s going to be at the same level as the fence. It’s going to have the same level as the fence. You’re going to go 20 feet from the where the bottom of the fence is.

Mr. Harter – It’s the same discussion I think we had relative to your fence, just instead of ten feet we’re talking 20 feet, I think. And you have presented what we just discussed which is the topography of the site and the way you have it graded actually minimizes that 20 feet to a lower number and I think under a second application then you would present that information to us as justification for what you’re doing. I think that’s what you would try to do.

Chairman Reinhardt – I would suggest you go back to your same neighbors and say the issue now is the lighting. Are you ok with the pole being 20 feet up and there’s going to be lights and be as detailed as you can and if the timing is also an issue, if we have those same eight letters or more. It’s up to you.

Mr. Ostrander – I did go around to all the neighbors and show them pictures and told them it was going to be under lighting and I also told them we were going to flood the court during the wintertime and make it an ice skating rink for the kids in the neighborhood, too. Nobody had a problem with it. We went to every single person that I know. You’re saying that maybe it’s hearsay, but I did go with my wife and showed them pictures of the actual court with the lights up and

Chairman Reinhardt – If they signed these letters for you, I think they will probably be a little more specific on the lighting and it’s going to help us tremendously again understanding not only are they ok with the court and a 10 foot fence, but they are also ok with the lighting.

Mr. Ostrander – OK.

Chairman Reinhardt – Whatever hours that you’re looking for? If 10 pm is plenty of time, then there’s no need to ask for it.

Mr. Ostrander – I don’t think there really is need to ask for it.

Chairman Reinhardt – So all you’re looking for is the height.

Mr. Ostrander – I’m almost 50 years old, my wife’s over 50.

Chairman Reinhardt – Oh don’t say that.

(Laughter)

Mr. Harter – You go to bed early, then.

Mrs. Ostrander – It’s past my bedtime.

Chairman Reinhardt – Any other thoughts, questions before we proceed.

Mr. Ostrander – No, thank you very much.

Chairman Reinhardt – OK, so walking through the criteria. We know that we have 8 letters that were for the application. The first criteria that an undesirable change would not be produced in the character of the neighborhood. The justification being is that that size of a court needs a fence. There are berms with, are those evergreens?

Mr. Ostrander – They are evergreens.

Chairman Reinhardt – With evergreens, at least 12 feet high. You are on a corner lot. Arguably you are in a more expensive neighborhood and the neighbor letters that you have are all in favor of it and that also carries some weight. You said this whole project is about \$70,000? So you are putting quite a bit of an investment into it.

Anybody want to add anything else to the first criteria?

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

Much as what we just spoke about for the first criteria, heavy investment, neighbors are ok with it and the berms are in place.

The third criteria, the requested area variance is substantial.

You're allowed six feet, you're asking for ten feet and the court is, it's going all four sides?

Mr. Ostrander – Yes.

Chairman Reinhardt – You're 72 x 42? Approximately? So, I'd say that is substantial. Anyone else want to add anything to the third criteria?

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

I haven't heard anything about drainage or any kind of problems like that. Anybody want to add anything to the fourth criteria?

Mr. Harter – It's well mitigated with the grading and the landscaping.

Chairman Reinhardt – Ok, that's put that in there.

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.

Conditions being that the berm stays in place, that the project shall comply with the code relative to lighting. Anybody else want to add anything else for whether it be the criteria we went over or the conditions? Hearing none I'll entertain a motion to approve the area variance as the criteria.

Mr. Harter – I'll move to approve.

Ms. Morley – I'll second it.

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Chairman Reinhardt – Any further discussion from anyone? All in favor? (Aye) Carried.

Mr. Ostrander – Thank you.

Chairman Reinhardt – Thank you for your time and effort. Well presented.

Mr. Ostrander – Thank you. I really appreciate it. I'll get going on the next variance.

Mr. Nearpass – What would be the timing for him to get to the next meeting? Or the probably the meeting after that?

Ms. Reese – The next meeting is November 4th. The deadline is October 21.

Chairman Reinhardt – If you get the application in on time. I think your neighbors understanding the lighting issue. If you have billing statements or order invoices? Anything with those lights are, that probably would help us take a look at what we're dealing with.

Mr. Harter – And if you did a photometric study and shared that with us. That would be helpful, too.

Mr. Ostrander – No problem. I can do that.

Chairman Reinhardt – Alright. Thanks so much. Have a good night.

Resolution: Ostrander Fence Area Variance, Appl. No. 34-Z-2019

At a regular meeting of the Town of Victor Zoning Board of Appeals held on October 7, 2019 the following resolution was adopted:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on September 23, 2019 from Greg Ostrander for 6920 Jillian Rise, requesting a 10 foot fence for a sports court, whereas Code §211-41D(1) states fence and supporting poles shall be limited in height to six feet from grade in residential districts.

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on September 29, 2019 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, a Public Hearing was held on October 7, 2019 at which time no residents spoke for/against the application and eight letters were received for the application,

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:

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: A court of this size needs a fence. There are berms with at least 12 foot evergreens. The home is on a corner lot. This is a more expensive neighborhood and the neighbor letters presented state that these neighbors are in favor of the project. The applicant has quite a bit of an investment in this project.

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: Similar to the first criteria; applicant has a heavy investment, the neighbors are fine with the project and berms are in place.

3. The requested area variance is substantial.

Justification: The code allows for six feet, but applicant is asking for a ten foot fence. The court is 72' x 42'.

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 presented shows drainage or any other type of physical or environmental issue. Location is well mitigated with grading and the landscaping.

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 and seconded by Ms. Morley:

DECISION:

NOW, THEREFORE BE IT RESOLVED WHEREAS, that the application Greg Ostrander requesting a 10 foot fence for a sports court, whereas Code §211-41D(1) states fence and supporting poles shall be limited in height to six feet from grade in residential districts, 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.
2. The berm shall stay in place.
3. The project shall comply with the code relative to lighting.

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

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

Approved: 5 Ayes 0 Nays

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Chairman Reinhardt – You want to talk about calendar? Next year, do we want to do much of the same? I don't think we have to decide today.

Ms. Reese – I think Jack wants to know if you want to go with the same type of schedule, 6 months, 6 months

Mr. Harter – It seemed to work out. What was it, one meeting a month for the winter months? Is that what we did?

Chairman Reinhardt – So we consolidated it once a month and I don't think we were over taxed or overburdened in the winter through early spring and then, I don't think we were too busy over the summer and the fall. They were all manageable. Do you want to think about it? Do you want to look at a calendar?

Ms. Morley – I'm good.

Mr. Harter – And, we have the option, I suppose if for some reason something changed we could have another meeting.

Ms. Morley – Those days that are on holidays, do we move it to that Tuesday?

Chairman Reinhardt – That's what I'm looking at now. The one meeting in January that would fall on a Tuesday because Martin Luther King is on that Monday. And the other Tuesday would be after Labor Day. If that's alright, if you don't mind moving it from Monday to Tuesday otherwise the first Monday in January. It has to be on the first and third week, we can't change that? I don't think we have at least many options on that, so really the issue is one or two meetings and I'm good with it. And if everybody's good with it?

Mr. Salsburg – It doesn't matter to me.

Mr. Nearpass – Fine by me.

Chairman Reinhardt – Ok, let's keep the calendar the same. Thanks. Any other business? Anything for us, Al?

Mr. Benedict – No.

Chairman Reinhardt – We'll make a motion to adjourn. Alright. Have a good evening.

Motion to adjourn Mr. Harter, seconded by Mr. Nearpass. It was unanimously agreed and RESOLVED that the meeting was adjourned at 7:40 PM.