

A regular meeting of the Town of Victor Zoning Board of Appeals was held on January 11, 2016 at 7:00 P.M. at the Victor Town Hall, 85 East Main Street, Victor, New York, with the following members present:

PRESENT: Keith Maier, Chairman; Scott Harter, Vice-Chairman; Michael Reinhardt; Mathew Nearpass; Donna Morley

OTHERS: Al Benedict, Code Enforcement Officer; Thomas Polsinelli; Debby Trillaud, Secretary

The meeting was opened and the Flag was saluted.

Housekeeping items were taken care of.

APPROVAL OF MINUTES:

The December 7, 2015 minutes will be considered at the February 1, 2016 Zoning Board of Appeals meeting.

OBERSERVATIONS:

Mr. Harter – It relates to the sign variance that we did not grant for Panera Bread. I happened to notice a lot of people making left hand turns, as I drive by, into that one way entrance. In other words violating the signage that is there now. I also noticed that the sign is still up, although, Fridays is closed evidently. I was curious to know what the final disposition was. We disapproved their sign, do they have to take it down?

Mr. Benedict – They have to take it down. I can tell you that Mr. Filer had called here asking what his next option was. We provided him with a lot of information with the understanding that we thought he was coming back in shortly to re-appeal. I don't know where it stands at this point, I can follow up on that. But, yes, the sign should come down if he's not going to reapply.

Ms. Morley – You should see, people are even coming out that way and trying to pull across heading to Eastview.

Mr. Harter – When I look at it and see how it is being used now, sign or no sign, I think it's just not right. I know that was a function of planning at DOT.

Mr. Benedict – I don't know how you fix that, put a divider in or something.

Mr. Harter – I think Mr. Filer should go back to the DOT and say this isn't working.

Chairman Maier – I think he fought pretty hard for that, it was an expensive proposition for him.

Mr. Harter – Even with the sign being where it is, I'm not sure the drivers are heads up enough to catch that sign and know what to do with it.

Ms. Morley – It's a hard to see sign too.

PUBLIC HEARING

NEW APPLICATIONS:

1. POLSINELLI – 4 SEASON SUNROOM – (Area Variance)

6448 Sunray Crest Drive

Appl. No. 23-Z-15

Applicant requests an area variance to allow an approximately 6.5 foot side setback from the lot line for a sunroom roof overhang, whereas the Boca Park subdivision approvals site an 8 foot side setback.

The secretary read the legal notice as it was published in The Daily Messenger on January 3, 2016.

Mr. Thomas Polsinelli of 6448 Sunray Crest addressed the Board.

Mr. Polsinelli – I'm building a sunroom off the back of my house. It's going to sit in the same footprint as a 16'x16' foot deck that is already there. I took the measurements and you can see on some of these prints I gave you what I need. Mr. Benedict pointed out that I took the measurement to the lot line from the inside of the gutter, inside of the overhang for the dimensions. Then, he pointed out that I have to go to the far side which adds another two inches. He was also concerned about the way the deck sits to the house.

Mr. Benedict – It appears that the house is not square to the lot line, such that the deck there, the back, would be even closer to the lot line.

Mr. Polsinelli – So I guess I'm amending my letter in saying that I don't want a 6'9" setback, it's going to be a 6'5" setback. I'd like to point out that the boundary is up against land deeded to the Town of Victor. There is no resident there, there's nobody there. The nearest resident is about a quarter of an acre away. (*showing on image*) This house – it's approximately 48 feet before his property starts. I was under the impression that I wouldn't have a problem because it did sit in that same footprint. Because of the overhang on the roof, I have to come in and ask for a variance. Answering these questions, I don't think it's going to be a detriment to the neighborhood. The roof line is kind of the same as the rest of the neighborhood.

Chairman Maier asked if the Board members had any questions.

Mr. Harter – There is a strip of land next to you that is dedicated to the Town of Victor, that's interesting; it's approximately, according to your map, 48 feet wide. Is that for a future street or something?

Mr. Polsinelli – I think that, originally, was for the Town to access a sewer that is down here in back. (*showing plan*).

Mr. Harter – Is that correct to your understanding Al? Do you have any idea what the purpose of this...

Mr. Benedict – It's a little before my time, I couldn't tell you exactly what that's for. I was thinking there was a park somewhere down the road or just leaving it vacant.

Mr. Polsinelli – When I bought the property, that's what they told me. It's kind of small for a park. Also in the back of the property there is a lot of land deeded to the Town of Victor. Right in that top left corner there is a sewer and I think it's for an access road.

Mr. Harter – OK. Then it looks like it opens up and there is a chunk of land behind there.

Mr. Polsinelli – Van Bortel Subaru bought that property, it used to be the junk yard, if you keep going through that, you're going to get off that property and hit this big swath of land deeded to the Town of Victor.

Mr. Benedict – I think part of that is the 50% open space that is required of a major subdivision. Back then they were taking land in dedication versus including the conservation easement within each lot. That's probably what it is with no intention to use it for anything.

Mr. Harter – From the aerial and from the map it looks like it's just open space. It also looks like it is unlikely that it will be developed because Van Bortel Victor Auto Parts is to the north of you.

Ms. Morley – Mud Creek runs right through there.

Mr. Harter – I recall that Creek having worked on some projects around there, so there is a floodplain out there too, so it would be restricted that way too. The reason I asked is I'm just curious to know if some sort of development would come through by way of a road.

Mr. Polsinelli – We always thought that when we bought it. Sunray Crest extends down now from Ferncrest, it comes in at Route 40. East Victor Road swings around into Route 41. We always thought that they would put another tract in there, but the builder said that it's just not enough land for a tract and housing and streets.

Mr. Harter – I think so too, and my further recollection is that the floodplain encroaches in upon quite a bit of that land.

Mr. Polsinelli – It's pretty wet back there.

Mr. Harter – The purpose of the question is just to know whether there is something back there if it would somehow affect what you are asking.

Mr. Nearpass – The aerial photograph that you provided - On the opposite side of the house where the driveway is, it doesn't look like there is anywhere near 12.5 feet here between the house. Maybe this drawing is more accurate, it seems like it would be right on that line.

Mr. Polsinelli – There is, you've got a fat pen, a magic marker on that aerial.

Mr. Nearpass – So this side is nine and a half, right and it's supposed to be 12 and a half.

Mr. Polsinelli – That's regular size.

Mr. Harter – If you get into those situations though, we find that sometimes those lines are taken off the tax maps and...

Mr. Nearpass – It's just something that stuck out at me.

Mr. Harter – That's a good question because sometimes we don't have a map as accurate as this.

Mr. Reinhardt – Your intention is to put the four season room right where the deck was?

Mr. Polsinelli – Yes.

Mr. Reinhardt – Are you going to pour a foundation?

Mr. Polsinelli - Yes.

Mr. Reinhardt – I want to go down a path and see if I'm thinking about this right. I'm not following why it is then that..., why can't you pour the foundation however many feet east? Let me rephrase the question. The reason for putting the four season room right where the deck is doesn't seem to coincide. You are going to pour a foundation, so the deck is going to be gone, the deck really doesn't have anything to do with it other than you're used to having it there.

Mr. Polsinelli – I can understand that. Originally when I talked to the architect about this, I thought he could put this thing on top of the deck I have. He came in and said it would be a lot easier for us if he just took the deck out and built it from scratch. That eliminated all the questions that the building department would have on the way my deck was constructed.

Now to move it I need a foot and a half. For me to move this whole thing over a foot and a half, I can't put a door where I want on the side there, we're talking a considerable change, a considerable headache here. On this 12.6 side there is going to be a door that is going to come out four and half feet.

Mr. Reinhardt – You want the door on the south side of the structure?

Mr. Polsinelli – No, I want the door on the left side here. It's looking north, yes it's on the south side of the house.

Mr. Reinhardt – It would open up towards your street.

Mr. Polsinelli – Exactly.

Mr. Reinhardt – For clarification then, are we in agreement, you want that door on the south side of the new structure?

Mr. Polsinelli – Correct.

Mr. Reinhardt – Why? As opposed to if you were to move the structure over to the east, so it is right behind the house, why can't you then have the door on the west side of the new structure?

Mr. Polsinelli – It's fairly high, and if I did that I would have to make two tiers of steps because it's fairly high. Here I only have four or five steps down to the ground. On the east corner or the north end of the house is a considerable height and I would have to make a two tiered stairway, not one big stairway which would take me too far into the yard.

Mr. Reinhardt – As you proposed the doorway is going to need stairs to get to the ground. How many steps?

Mr. Polsinelli – Actually four or five.

Mr. Reinhardt – And if you were to move the new room over so that it is right behind the house and the door would be on the west side of the house, how many steps are going to need?

Mr. Polsinelli – A considerable amount.

Mr. Reinhardt – You've got to give me a number, I don't know what a considerable amount is.

Mr. Nearpass – I'm not sure... (showing on a plan) If you move it from here to here, what's the elevation difference.

Mr. Polsinelli – Right here I see ten steps, it does fall away. Besides that, what this gentlemen is telling me from Colonial, is that I can't just build a doorway and steps, it has to be a type of landing, so we still have the same problem. If I put a three foot landing here and then steps, then I'm even closer to this property line.

Mr. Nearpass – Isn't this the same elevation?

Mr. Polsinelli – No, I'm going to have a door here and I can't have a door, open a door and have a step down. There has to be some type of a landing there, so there will be a landing here at 4.5 feet, then steps. If I put it here, I still have to make this landing and then steps, so I'm even closer to that line.

Mr. Nearpass – But if you made it here, this would be four and half feet that way.

Mr. Polsinelli – You want to take the whole thing and shift it down here.

Mr. Reinhardt – If you were to shift it so that it was directly behind the house, I understand you still need a landing, but then you still can have a landing that is parallel to the house going south alongside of the house.

Mr. Polsinelli – I understand that. We're talking a foot and a half, now I'm moving it over to get behind the house four and a half feet. If I do that, now we're coming out over my – we're digging footers on a patio; I have a door that comes out here, a walk-out basement, this would be over that and I'm not sure it's going to be high enough to get over that door.

Mr. Harter – Your answer is that if you slide the room this way you interfere with other amenities associated with your house such as walk-out ...

Mr. Polsinelli – Walk-out, I have vents here...

Mr. Reinhardt – Are you familiar with the property?

Mr. Benedict – A little bit.

Mr. Reinhardt – Do you know what I'm trying to drive at here? How much difficulty is he going to experience by shifting the whole structure over directly behind the house? I understand the landing piece and the stairs and I'm hearing, I don't know, I'm not sure.

Mr. Polsinelli – I don't know exactly what the distance is, the height. I'm saying that if I move this thing over four and a half feet over, directly behind my house, I'm getting into a lot of problems with my vents from my stove that come out the top of my basement walk-out. I have a patio built here, I have a couple of water features in the yard and to move it over four and a half feet is really a hardship.

Mr. Reinhardt – Do want to comment on any of that?

Mr. Benedict – I can't verify or deny that reason.

Chairman Maier – What I think Mike is trying to get at is ...

Mr. Polsinelli – I thought how to get around it when we first ran into this problem and for me to do it that way, I'd rather not do it, it would be too much work, too much..... I also have a kitchen window that comes out back there and I don't know if that would interfere with anything.

Chairman Maier – So we don't know any distances. Has anybody looked at trying to get measurements?

Mr. Polsinelli – You want me to move this structure over four and a half feet?

Chairman Maier – What we're trying to ask is if there is a way to mitigate the variance.

Mr. Polsinelli – I understand. I don't know exact distance, I didn't think I'd be into this. I'm just telling you that to move the deck over, or this room over that far, I'm telling you the problems that will come up.

Mr. Harter – Well, there must be a reason why your architect came up with the four and a half feet that are on the plans right here. There must be some basis for this, right?

Chairman Maier – That's the way it's set up right now. That's the way the layout and the flow is set up right now.

Mr. Polsinelli – And everything would have been fine if not for this roof overhang and that's what puts me too close. I could keep the deck where it is and there is no problem; because of putting a roof on this structure, that's what gets me too close to this line.

Ms. Morley had no comments.

Chairman Maier – This is an actual survey. A surveyor went out there and measured the corners of the house and the lot lines. We've got a 15 foot setback but we're showing a 12.5 and a 9.5 foot setback.

Mr. Benedict – This is a reduced setback subdivision so it's eight feet.

Chairman Maier – Oh, it is eight feet, OK. Are you the original owner?

Mr. Polsinelli – Yes.

Chairman Maier – Was the deck built when you bought the property or did you build it?

Mr. Polsinelli – I built it.

Chairman Maier – Did you get a building permit for it?

Mr. Polsinelli – Yes I did, it's right here.

Chairman Maier – How far from the side setback is the deck currently?

Mr. Benedict – I did a calculation and it's right at eight feet.

Chairman Maier – That's what I was wondering. The concern now is the overhang. If the overhang is 14 inches...

Mr. Polsinelli – It's actually 16 inches.

Chairman Maier – Your plans show 14 inches.

Mr. Polsinelli – Yes, I know, but as you can see on sheet number two, I took the figure from the inside of the overhang; Mr. Benedict says I have to take the measurement from the outside of that overhang. That added on another two inches. I need 77 inches, 6’5”. Basically, I need a 19 inch variance.

Chairman Maier – So we’re close with the deck, how do we make sure that we’re within the boundaries for the addition that you are proposing?

Mr. Polsinelli – Well it’s going to sit in the same footprint as the deck; that’s how all these plans were drawn up. Except for that roof line, that’s where my problem is.

Chairman Maier – How many inches do you want?

Mr. Polsinelli – I want 19 inches.

Chairman Maier – Setback, how many inches?

Mr. Polsinelli – Six foot five inches. Correct, Mr. Benedict?

Mr. Benedict – Correct.

Chairman Maier – How do we know it’s going to be six and a half feet from the side?

Mr. Polsinelli – Because that’s the way the plans were made to build it. How can I assure you of that, what would you need?

Chairman Maier – One of the things you can do is have a survey done, have somebody come out and survey the lot line and make sure that you are within the distance you are requesting.

Mr. Polsinelli – That I’m within the distance I’m requesting now or when the thing is built?

Chairman Maier – When Al or Sean come out, how are they going to know... Are there trees along the side?

Mr. Polsinelli – There are trees on this Victor property.

Chairman Maier – How do they know that it is six and a half feet from the property line?

Mr. Polsinelli – Just like you knew the first time when I built the deck, they’ll put a tape on it I imagine.

Chairman Maier – Exactly how far is the deck from the lot line.

Mr. Polsinelli – 98 inches, I’m close.

Ms. Morley – You're talking about putting a door on this, now is the deck out there right now? (Yes) You say it's going in the same footprint, but the line on this drawing looks like it comes right to the back of the house and the new drawing, in which you're showing where the door is going to go, looks like it sticks out farther.

Mr. Polsinelli – No, it's pretty much the same. The deck that I have is steps that I built and there is no door there, it's just steps. An actual door is going to go in, so those are the measurements I have, 4.5.

To give you an assurance on where it is going to be, I can tell you, that's the way the plans are made. I'm not asking for any more.

Chairman Maier – You'll do a footer inspection AI, they'll probably run lines from the foundation and use that as a reference point. We're going to measure this from the back corner so we've got a diagonal, it's not a parallel line.

Mr. Benedict – We don't have a measurement for that back corner. That was the reasoning for the additional couple inches. Two inches for the overhang and two inches as well for the skew of the deck in the back. So we have four inches in addition to what he was originally asking for.

Chairman Maier – I'm OK with it, I mean the deck is there, I'm OK with it. The question I've got is how do we assure that it's within what you are requesting? What happens is that we know we've got a rough reference point; you're OK with getting close AI? (Yes)

Mr. Nearpass – At the end of the day, at least it's on the side of the house where there is no other house next to it. The chance of a structure going there is extremely rare given that it's a slice of land that the Town owns that leads to the back. Maybe if it were at the other side of the house we'd have the community here saying that they didn't want it, in my mind it would probably go the other way, but I'm OK with it.

Chairman Maier – Just for my own information, the northern distance of your addition is exactly the same as your deck?

Mr. Polsinelli – That's the way we talked about it when I talked to the builder, yes.

Chairman Maier – Because the farther out you go the more you are going to infringe on that setback.

Mr. Polsinelli – We just wanted 16'x16', because originally I wasn't even going to build a deck. I thought I could just take the railings down and put it right on that thing and I never thought we had a problem, but because the builder says look, it'd be a lot easier for everybody if we just did all the work...

Mr. Nearpass – Obviously, the overhang will stick out.

Mr. Polsinelli – It would just be a regular roof line. It won't break the continuity of the neighborhood. It looks like every house around there.

Mr. Reinhardt – This is a unique situation because the variance is potentially encroaching into the Town of Victor's property. What is ringing in my head is an apparent conflict of interest. What I think we need to get from AI are some facts; something like it's an unbuildable block. Is that parcel to the west, where the variance is potentially going to encroach ... I think we need to get some indication from the Town that it's an unbuildable lot, the Town doesn't have any interest on a variance that would encroach. If there was a homeowner right next door and that homeowner said I don't like that at all; we don't have that here, it's the Town, and we really can't speak for the Town with a Yea or Nay, I think that would be a direct conflict. You're not directly on the Board and I think we should have your opinion on if it's an unbuildable lot or as far as you can tell the Town doesn't have a big issue with a variance that encroaches. I think we need to make it as clear as we can, because I don't know how the Board is going to go and certainly the Town's opinion on what this variance means to them...

Mr. Nearpass – So how do we notify them, how does it normally work?

Chairman Maier – Was the Town notified that there was going to be a Public Hearing tonight.

Ms. Trillaud – Yes, but I stuck it in my file.

Mr. Reinhardt – OK. I think if we get something from AI along the lines of - It's an unbuildable lot; the Town's not going to put a house on it but they can sell it.

Chairman Maier – Or there are other plans that we are not aware of that may pose a conflict to what you are trying to do. Are you in a hurry?

Mr. Polsinelli – Well, it's been in the works for a couple of months now, especially with this process. I would like to have them start or at least give them the OK to start prefabbing this. This is something that goes to a factory, they prefab it and then bring it, and there is a five week window there just for them to prefab it.

Mr. Reinhardt – If the Board agrees with it, then I think we should look into it.

Chairman Maier – I think if it were Niagara-Mohawk or somebody else, I think that we need at least to get some type of response.

Mr. Reinhardt – When we did the storage facility up by Home Depot we made pretty sure that there was a letter from that...

Mr. Harter – Yes, I think so, but perhaps in this particular case, what might be efficient, is to consider making that a condition of an approval resolution. If the Town says they have big plans for the property, then that nixes the...

Mr. Nearpass – That doesn't help him place an order for his addition.

Mr. Harter – No, but what I'm suggesting is that after the meeting, if we render an approval resolution with that as a condition, Al could then, in a day or so, confirm or deny whether or not there is anything important with this property.

Mr. Reinhardt – If you are going to look for a formal process, you have to get it on the agenda for the Town Board. So when is the next Town Board meeting?

Ms. Trillaud – Two weeks.

Mr. Nearpass – The ironic part here though is that the Town has had more time than the public to be aware that somebody seeks a variance on land adjacent to a parcel that the Town owns.

Mr. Reinhardt – Isn't that what you were saying Keith; the Town has known about this, we received it, the Town has been on notice, they're not here, and no is squawking about it. It's a passive acceptance of it.

Chairman Maier – We'll make a condition. I think if we make a condition that if we get a negative response from the Town regarding the application. Is that sufficient Al?

Mr. Nearpass – What does that mean? We have to wait for someone to write a letter?

Mr. Harter – What if we got a confirmation from Katie who is the Town Planner and who from a global perspective knows what's going on?

Chairman Maier – That the variance does not pose any conflict.

Mr. Harter – I think as part of her job description, she's aware of all the planning that goes on.

Mr. Reinhardt – That's not how it works. You could ask her, but if she doesn't have authority to make that decision, she's not going to do it.

Mr. Nearpass – At the end of the day he's going to be waiting for a Board meeting or some formal process to exist and probably some kind of commission gets created to figure out what they're going to do. I'm looking at it like the Town has been informed just as much as the neighbor next door on the issue. If there was an issue with the variance the neighbor would be here complaining like most neighbors would do if something is going on that they don't like...

Mr. Polsinelli – I've been there for 20 years and it's my understanding that it's just an access to get to that sewer.

Mr. Harter – But you know that the reality is that the Town didn't catch it.

Mr. Nearpass – So let's penalize the applicant then?

Mr. Harter – No, I'm not suggesting that.

Mr. Nearpass – That’s exactly what we’re going to do.

Mr. Harter – That’s probably what happened that the Town didn’t...

Ms. Trillaud – Al, I have a question on that. There are actually many applications where the Town gets a postcard and I don’t know what to do with it. Do I give it to the Supervisor?

Mr. Benedict – I think I’ve actually asked Katie the question, what happens when the Town is an interested party, who comments. There is no answer. I know what the answer is, in this case I can go back to the approval minutes, the resolution and find out why that parcel was created and given to the Town. See if there are any plans with that and then follow up with Parks & Recreation and see if there are any plans for a park there. Follow-up with Jack, Katie, see if they know anything. If all of them say there is nothing of interest, nothing planned there; we can always move forward, depending what you want to do.

Chairman Maier – We can do that within two weeks?

Mr. Benedict – Sure.

Mr. Harter – Perhaps the question is what is the purpose and intent of the land.

Mr. Maier – Is it fair to poll the Board to get a feel for how the Board feels about the application?

Mr. Nearpass – I’m in favor of it as proposed based on what we discussed.

Mr. Reinhardt – Given what he’s told us, I’m comfortable with it. I felt the need to address and get on the record regarding the Town.

Mr. Harter – I think it’s a good point Mike.

Mr. Reinhardt – Given the amount that he’s asking for, I can’t imagine what if anything the Town could come up and say that this is going to bother them.

Mr. Nearpass – If anything has been brought to light as a result of the debate/discussion I think it’s that the Town needs to understand what to do when they get the postcards in the mail and if somebody shows up or not, so we don’t do this all over. The Town gets just as much time as everybody else, it gets more time.

Mr. Maier – The Town did get a card?

Ms. Trillaud – Yes. Well, I don’t waste the postage on it.

Mr. Maier – And who does the card go to?

Ms. Trillaud – I stick it in my file; it doesn’t go to anyone.

Chairman Maier – We did have a meeting the Monday before I left and so the Planning Department is aware that this was reviewed and this does abut Town Property. My inclination is to move ahead with it this meeting, if everyone is OK. I think that we can put that in the minutes, that we did have a meeting with the Town; we did review this application prior to this meeting and we'll put a condition in that if there are any issues, that if there is an approval there will be a condition to consider any comments from the Town. Is that acceptable?

The only suggestion I have is that maybe if you start pouring cement if you can get the lines run and get the OK before you start pouring cement for your own protection. If it were square to the lot I would say fine, but make sure you're safe.

Mr. Polsinelli – The building itself is 16'x16' so it can't possibly...

Chairman Maier – I saw that, just to be sure, it's not hard to run a line.

Mr. Polsinelli – I hate to press it, could we avoid it by just asking for another couple of inches?

Chairman Maier – Running a line is not hard. You just take a string and you put it next to your wall and run it 18 feet out and try to come up with an idea where the property line is. Those lines when you pull them tight are pretty straight.

Mr. Harter – Keith, when you had your meeting with the staff on this application, did the staff say anything about the land?

Chairman Maier – No, but I believe they reviewed everything with the applicant. Is that correct Al? (Yes) They did review the material with the applicant.

Mr. Harter – For example, in that meeting typically there is Kim and perhaps Katie that are in the planning department.

Chairman Maier – Yes, there was Kim, there was Al.

Mr. Harter – If there were any issues they would have said something at that point. I think that's the defacto opinion.

Chairman Maier – Maybe we can figure out, down the road, how to deal with applications that abut Town property. Anyone else have any questions?

Chairman Maier went through the resolution and asked if there was anyone from the public who had any comments regarding the application. There was no one.

During the reading of the resolution there was discussion between the Board and Mr. Polsinelli on when he would have the distance to the side setback checked. It was suggested that he have Mr. Benedict come out and check the measurement lines before pouring the cement but perhaps even before digging the holes for the footers so that holes are not dug in the wrong spot. This is a quality check and for his safety. Mr. Polsinelli was told that he needed to give Mr. Benedict 24 hours in advance and call before noon.

RESOLUTION:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on December 28, 2015 to allow the construction of a Four Season Room on an existing deck that will have a six foot five inch side setback from the roof overhang to the side property line of 6448 Sunray Crest Drive, Victor, NY 14564 whereas the Boca Park subdivision was approved as a clustered subdivision with an eight foot side setback; and,

WHEREAS, said application was referred by Alan 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 January 3, 2016 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 January 11, 2016 at which time no residents spoke for or 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 of fact for the Four Season Room to be placed six feet and five inches from the side property line:

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: The four season room is replacing an existing structure that exists in the same footprint. No neighbors came forward to protest the application and there is open space next to the property where the variance is sought.

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: The applicant indicated that there are obstructions that would limit moving the unit to the east including: exhaust vents, doors, a patio. It would also require a significant modification in the egress from the four season room.

3. The requested area variance is not substantial.

Justification: There is a structure that already exists and the four season room is going in the same location.

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

Justification: There is no neighbor to the west of the property where the variance is requested; there is already an existing structure.

- 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 motion made by Keith Maier, seconded by Scott Harter:

NOW, THEREFORE BE IT RESOLVED that the application of Thomas Polsinelli, 6448 Sunray Crest Drive, Victor, New York 14564, for an area variance to construct a four season room on an existing deck with a six foot five inch side setback from the roof overhang to the side property line, BE APPROVED:

FURTHER RESOLVED that the following condition is imposed:

- 1. Verification that the side setback is correct prior to the pouring of the footers.

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

Scott Harter	Aye
Michael Reinhardt	Aye
Keith Maier	Aye
Donna Morley	Aye
Mathew Nearpass	Aye

Adopted 5 Ayes, 0 Nays

2. MARTIAL ARTS STUDIO – (Interpretation)

75 Victor Heights Parkway
 Appl. No. 24-Z-15

Applicant is requesting for an interpretation and appeal of determination of the Town of Victor Code §211-24 to determine if a martial arts studio and wellness center is a permitted use in a light industrial district; requesting approval as a use of a similar character to permitted uses in order to request a Special Use Permit from the Planning Board.

At 7:55 PM the applicant or a representative was not at the meeting.

Mr. Nearpass – This is just an interpretation request, we can still discuss it.

Mr. Reinhardt – I would recommend, that you put in the minutes that they are not here. The application is next, we discuss it and we can either decide or give them another chance. I think we discuss it and then make a decision.

The secretary read the legal notice as it was published in The Daily Messenger on January 3, 2016.

Chairman Maier called up the Martial Arts applicant and there was no one to present. He asked the Board to make comments.

Ms. Morley – It says it will consist of two instructors and a maximum of 30 students, but it says there are only ten parking spaces available maximum. After 5:00 PM it will have additional parking. Where do these people park, OK, after 5:00 PM they will hold classes.

Mr. Nearpass – I read the light industrial district regulations that were attached. Unless I'm missing something completely, I think Sean made the right call. It says the intent of the district is to provide areas of research or development of materials, methods or products and for compatible high technology and light manufacturing uses that are environmentally compatible with the physical and natural environment of the neighborhood. I just don't see how any of those uses are even close. I get that it sounds like it's taken them two and a half years to try to rent the place out. They finally found someone that is willing to bite on it, but it's just not the right fit.

Ms. Morley – Plus it's kids under 16 years old and I don't think they belong in a light industrial zone.

Mr. Harter – My comment is that it seems awfully similar to when we looked at this for churches.

Chairman Maier – Yes, which has been modified.

Mr. Harter – Right, the regulation was then modified to accept churches.

Mr. Nearpass – The church, I believe, is right next door to this. It's in the same area.

Mr. Harter – Personally, when I look at it versus a church, I don't see a lot of difference.

Mr. Benedict – The reason the church was added was concerns over, RLUIPA (*Religious Land Use and Institutionalized Persons Act*) which is legislation that says you can't discriminate against churches. It had to do with a very obscure part of it. It had to do with daycare or something to that effect, how if you can't discriminate daycare, how can you discriminate churches. That's the reason that was changed.

Mr. Nearpass – But the Town (Board) changed it.

Mr. Benedict – Yes.

Mr. Nearpass – It wasn't us giving them a variance.

Mr. Harter – No, but they came to see us first.

Mr. Maier – It was subsequent to the application.

Mr. Nearpass – Our advice was to go and talk to the Town Board.

Mr. Harter – And they did and they got it changed. If I remember right, it was actually another church that came in. The first church that came to see us got the recommendation and then fell out somewhere, but another church came in and took the ball and ran with it, so to speak.

This, although it's probably not included in the same regulation that you just mentioned (A1), the discrimination regulation, just seems similar.

Mr. Maier – So it's not a good fit is what you are saying?

Mr. Harter – I'm saying that I don't see the difference between this and a church. A dojo and a church.

Mr. Nearpass – One path they went to the Town Board and got the Town to change the Code. That would be my recommendation for this applicant instead of seeking a variance.

Mr. Harter – Right. That's what I would say too. I would say we give them the same advice that we gave the church; go to the Town Board.

Mr. Nearpass – I wouldn't say personally that this is a good fit for the area if it's zoned light industrial. You'd want high tech, R&D there. It sounds like the church fell under a special case. I think the building owner also had a lot of data in terms of *inaudible*.

Mr. Reinhardt – It doesn't fit.

Chairman Maier – I agree. I think the special use twist isn't appropriate either. I don't know if we need to rule on that but they had tried to use a separate section of the Code – Special Use Permit. I actually took out the New York State guide for zoning – Special Use Permit. ... It still needs to be approved for a special use. This special use needs to be in the Code before it can be approved for a special use and because it's not in the Code, they can't apply for a special use permit.

Mr. Benedict – They can apply to this Board for an interpretation as to whether it fits in the zone, in which case then the Planning Board can issue a special use permit.

Chairman Maier – Doesn't the special use permit need to be a specially permitted use as defined by the Code?

Mr. Benedict – I understand what you are saying, but by this Board saying, "yes it fits" you are now saying that it is now a special use.

Chairman Maier – Right. It appeared to me that they were trying to get at it from two different angles. One was our interpretation and also to see if they could get a special use permit. I feel the same way, I don't think it fits the definition of the light industrial district.

Mr. Benedict – Just for clarification, they are also considering trying to come in under Daycare.

Chairman Maier – I don't think that it fits.

Mr. Nearpass – It says a facility duly permitted by the New York State Department of Social Welfare for the care of seven or more children for less than 24 hours each day. Can a karate dojo get a license?

Chairman Maier – For a daycare you have to be licensed to begin with, so we would need to see the license. There are criteria that are required to be a daycare provider. We don't show any evidence that they are a licensed New York State daycare provider.

Mr. Nearpass – They would probably be able to do daycare, but not acupuncture or chiropractic. They already signed the lease, it looks like it was signed in July so they probably...

Mr. Benedict – It think they've already started some construction.

Chairman Maier – Proposes to open a private school to teach, a little bit of everything, martial arts, character building, self-defense to children and adults, additionally chiropractic, acupuncture and day spa services. I don't see that being a day care provider.

Mr. Harter – I read Sean's determination where he calls it a dojo and a wellness center. It is a chiropractor, acupuncturist, and a massage therapist too.

Chairman Maier – We are all in agreement that this does not fit a light industrial district? I will ask if anyone in the audience has any comments. There is no one.

Mr. Harter – Do we recommend, as with the church, that they go to the Town Board and try that avenue?

Mr. Reinhardt – No, we are not here to dispense advice. If they do not have the wherewithal and the courtesy to show up and make the application, I don't think we should be worried about dispensing advice.

The Chairman read the resolution.

WHEREAS, a notice of appeal and interpretation request by Kyle Schoenheit and Paul Poresky, of 1741 Seneca Trail, Waterloo, NY 13165, was received by the Secretary of the Zoning Board of Appeals on December 28, 2015, appealing the determination by Victor Code Enforcement Officer, Sean McAdoo, dated December 28, 2015, that Victor Town Code §211-24 does not consider a martial arts studio a permitted use at 75 Victor Heights Parkway which is in a light industrial zoned district.

WHEREAS, a Public Hearing was duly called for and published in "The Daily Messenger" on January 3, 2016, and whereby all property owners within 500 feet of the subject property were notified by U.S. Mail; and,

WHEREAS, a Public Hearing was held on January 11, 2016, at which time no residents spoke in favor or against the appeal and interpretation request to reverse the Determination dated December 28, 2015 made by Sean McAdoo; and,

WHEREAS, after reviewing the file, all of the testimony given at the January 11, 2016 Public Hearing of the Zoning Board of Appeals, and any and all evidence submitted by interested parties, after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings:

FINDINGS

The Town of Victor Zoning Board of Appeals agrees with the Determination made by the Town of Victor Code Enforcement Officer, Sean McAdoo, on December 28, 2015.

DECISION:

On motion made by Michael Reinhardt, and seconded by Donna Morley:

NOW, THEREFORE BE IT RESOLVED, that the Town of Victor Zoning Board of Appeals determines that Victor Town Code §211-24 does not include a martial arts studio as a permitted use in a light industrial district, and also that it is not a use of similar character to permitted uses, and; that the Determination of Sean McAddo, dated December 28, 2015, is hereby UPHELD.

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

Scott Harter	Aye
Michael Reinhardt	Aye
Keith Maier	Aye
Donna Morley	Aye
Mathew Nearpass	Aye

Adopted 5 Ayes, 0 Nays

On motion made by Mathew Nearpass, and seconded by Scott Harter, the Public Hearing was closed by unanimous decision.

Housekeeping items were discussed. Chairman Maier inquired regarding his ID badge. Mr. Nearpass asked what district the Pinnacle project was in and Alan Benedict replied that it was in a Planned Development District (PDD).

In the future signs will be put on properties that have a Zoning Board of Appeals application in process. The Director of Development, Katie Evans does have that planned for the future. It makes it easier for the Board members to identify the property and also lets people know, who don't read their postcards, that there is an active project at the property.

Agreed upon unanimously, RESOLVED, that the meeting was adjourned at approximately 8:15 PM.

Debby Trillaud, Secretary