

A regular meeting of the Town of Victor Zoning Board of Appeals was held on February 1, 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; David Hou, Town Attorney; Charles Battle; Glenn Thornton; Mark Crane; Joe Kondas; Debby Trillaud, Secretary

The meeting was opened and the Flag was saluted.

### **CODE ENFORCEMENT QUESTIONS:**

Mr. Harter – I have an observation that I would like to share with Al. I didn't drive by tonight and see it, I took another way here, but Fisher's Landing, there was a gun shop in there. I know we have gone back and forth on neon signs and whether they are allowed or not allowed, but they have a flashing neon sign. I think we all agreed that flashing was not something we allowed.

Chairman Maier – It's almost like a strobe, isn't it?

Mr. Harter – Yes, it is kind of like a strobe light, so I thought ....

Ms. Morley – The gun shop? They had an auction there, so I don't believe they are open any more.

Mr. Harter – It's within 15 or 20 feet of the gun shop as I recall.

Mr. Benedict – I have to take a drive tonight and look at something else, so I'll take a look at that too.

### **APPROVAL OF MINUTES:**

On a motion by Michael Reinhardt, seconded by Donna Morley,

RESOLVED that the minutes of December 7, 2015 be approved as submitted:

Keith Maier	Aye
Scott Harter	Aye
Michael Reinhardt	Aye
Donna Morley	Aye
Mathew Nearpass	(Not yet arrived)

Approved: Ayes 4, Nays 0

On a motion by Keith Maier, seconded by Scott Harter,

RESOLVED that the minutes of January 11, 2016 be approved as submitted:

Keith Maier	Aye
Scott Harter	Aye
Michael Reinhardt	Aye
Donna Morley	Aye
Mathew Nearpass	(Not yet arrived)

Approved: Ayes 4, Nays 0

## **PUBLIC HEARING**

### **NEW APPLICATIONS:**

#### **FINGER LAKES COFFEE ROASTERS – PAVED AREA (Area Variance)**

7330 State Route 251

Appl. 22-Z-15

Applicant is requesting to allow paved areas to be within the buffer zone of a wetland, whereas Section 211-30A states that no construction or impervious surface shall be permitted within 100 feet of the boundary of a wetland.

The secretary read the legal notice as it was published in The Daily Messenger on January 24, 2016.

Glenn Thornton of Thornton Engineering addressed the Board.

Mr. Thornton – Good evening. I'm the engineer for the applicant, High Rustler LLC, operating as Finger Lakes Coffee Roasters out of the building presently. I apologize for being in front of you tonight, so late in the game here. We were unaware that a variance was needed for this project. In fact, we had received our Planning Board approval; we had applied for our wetland permit with the DEC; and then we learned that we also needed a variance.

As it turns out, we have received the Wetland Permit, not intentionally, we would have gone in the other order, to make sure we could get our variance first before we went to the trouble of getting that permit, but we have secured the permit. We submitted that with the application. One of the problems here is that we really don't know where the boundary of the wetland is. We knew we were in the check zone with what we were building, but we weren't

sure if we were within the 100 foot buffer. As it turns out, when we submitted to DEC, they made the determination that we are within the 100 foot buffer to the wetland and a portion of the pavement we would like to construct is also within the buffer area. That's what they gave us the permit for. I'm not sure how much of the pavement is within the 100 buffer, but a portion of .....(showing on poster boards) the pavement that we're talking about is over in this area. This is the southern property line for Finger Lakes Coffee Roasters. This is the driveway back into the Town owned land; there is a trail system. The wetland is situated somewhere to the south of the stone driveway that the Town owns. A portion of this paved area that we are proposing to construct out here would be within the buffer area. The pavement itself, the reason that we have this over here is currently, this is the existing building; there is a loading dock in this area. They receive tractor-trailers at this loading dock, they back in. Unfortunately, with the pavement that they have now, tractor-trailers actually pull up on Route 251 and back into the parcel from Route 251. They just can't make the maneuver inside to back up to the loading dock. With the building addition there is a second loading dock being proposed over in this area and the pavement will accommodate the backing in movement for the semis reaching the loading dock and then they can exit through the existing parking lot. What we are trying to do is to remove all unsafe maneuvers from Route 251 with this additional pavement over here. The only time that pavement within the buffer area will be used, will be for maneuvers of trucks, probably one or two times a day maximum, a truck will pull up there and back in. The majority of the time there will be nothing on that pavement area, it will be hidden from view because as a part of the Planning Board approval we've got a number of plantings over in this area. The ten foot area between the pavement and the property line is going to be planted with nine barks. They grow pretty dense and they get to a reasonable height. It won't screen the building, but it will screen the pavement from the view of the trail. Also, the wetland vegetation over in this area will grow back. There has been some trimming. I know the Town did some trimming along the trail. As a part of this project for the drainage work, there was some minor grading adjacent to the pavement, but after the project is completed, the wetland grasses, everything else, will again grow up. There are still some of those wetland grasses over in that area and you can see that they are ten feet high. We expect them to continue all the way up through there. In fact, in front of the parcel, near the front property line, there is a ditch with the same type of grasses growing. I think it will be screened from the neighboring properties and again, its only use is a couple of times a day to get the trucks backed into the loading dock area.

We do want it to be paved because this whole area, if anybody has been over there, it's low, it doesn't drain very well. We really don't want it to be a pervious surface, a stone surface; we think the subgrade underneath the stone will get wet; won't give us the support we need, so we would like to have it paved to make it impervious to shed the water off the driving surface to make it more stable for the trucks. The other thing you have to consider is when the trucks move, drive in, they are also going to be turning on this pavement. So we would like something hard as a surface. A stone pavement, with the truck turns, with the wheels, we think it would probably get ripped up fairly quickly.

Mr. Benedict – I would just like to bring the Board up to speed. Glenn has provided some of the information. Like he said, this came before the Planning Board. At that point in time I reviewed it, the Town engineer reviewed it, and my research, the information I had, showed that the buffer would be, if I remember correctly, still 50 to 60 feet away from the lot line. It was the Town

engineer who identified this “check zone”. I think it’s something fairly new and we don’t really know a whole lot about what it meant. The project moved forward and it was approved by the Planning Board. I think the Town engineer had suggested to check this out and find out what this means and get a hold of the Department of Conservation (DEC). All of a sudden this permit shows up from the DEC allowing construction in a buffer zone. My first thought was, we will have to make this right by hopefully granting a variance. My second thought was, how did this happen, so that it doesn’t happen again. I called the DEC to find out what was going on and if it had to do with this “check zone”. My understanding, at least what the DEC told me, was that they had gone to the site and they did a delineation of the wetland. They did not write it down or record it, so it’s unofficial where the edge is. Then they marked off the buffer area, again, it’s unofficial, and what I understood was that if the pavement would not be in the buffer, it’s close enough so that they felt they should issue a permit just in case. There is nothing on paper, it’s only what DEC has done in evidence of issuing a permit. I think it’s important that the Board knows the story of the background of this and how it came before this Board.

Mr. Hou – I spoke with Al about a week or so ago about this particular issue. Specifically the fact that we don’t have a formally delineated boundary zone here from the DEC and the extent to which that may pose a problem for you as a Board. Ultimately the issue here is that the applicant has indicated to you that it seems to be somewhat acknowledged or confirmed by the DEC that some portion of the proposed paving area might well be within the buffer zone, although we don’t know the specific dimensions of it. That’s an open item which I think you will need to make a determination of here. Based on the information in front of you, you have a minimal amount perhaps, to take into consideration the applicant’s arguments and submissions about whether or not a variance is justified given the representation that there might be a portion of this check zone or buffer area that will be paved over. The potential consequence here is that if you choose not to act, the applicant potentially could take position that it hasn’t been formally determined that there is an intrusion into the buffer zone and they could well, potentially proceed with the paving as proposed anyway, but I think they are here in good faith with the expectation that things will be made right one way or the other or you will make your determination one way or another. You have to make a determination here as Board tonight whether or not the information provided to you, and the understanding that we have been given from the DEC about their concerns, justifies the variance. That being said, the existence of a DEC permit itself is not determinative or your own determination. You as a Board have the right and authority to make your independent determination as to the issuance of this variance or not.

Ms. Morley – So basically what Al is saying is that everything is unofficial but they were still given a permit?

Chairman Maier – My understanding, and I may be incorrect, was that...again there is a definition of the new “check zone” that was handed out in the material we received. I don’t know when it was introduced by the DEC. We want to determine whether the variance is justified. We need to make that determination first. The other thing, after reading through the material, is the reason the DEC gave the permit was to protect anything that may be surrounding the area. It was an extra layer of protection. We can into the specifics about what is in the surrounding area, but I believe that is why they issued the permit, to add an extra layer of protection for that wetland buffer area.

Ms. Morley had no other questions.

Mr. Harter – Al, did our Conservation Board weigh in on this application and offer an opinion.

Mr. Benedict – Debby could probably answer that question better.

Ms. Trillaud – Yes, they did quite a while ago before the Planning Board approved it which was this summer and they said no significant impact.

Mr. Harter – Just relative to the current situation before us, and as we get into fire related items, I always find it helpful to have input from the Board that is associated with the Town, or the experts associated with the Town, that have more in depth knowledge of wetlands than I do.

Ms. Trillaud – I think I put the resolution from the Planning Board (in your packets) and what the Conservation Board said may be in there. I may not have.

Mr. Harter – On a historical note, we had a similar situation happen directly across the street when the housing project went in that is currently there. The driveway encroached in on a section of wetland. We also had another similar situation with Fisher's Landing and the vacant foundation that sat there for many, many years that encroached wetlands. The story was very similar to the story I'm hearing tonight. The permit was issued but it wasn't exactly agreed to by the Conservation Board and as I recall we went back and forth until we finally had some resolution. I think it was Victor Golf Park before it became the housing development across the street and they had a portion of their driveway that went into the wetland buffer. I think the Conservation Board had some more conservative regulation than the DEC at the time. Marge Elder was the Conservation Board Chair at the time. We simply asked the Conservation Board to take a close look at it and give us their opinion. I personally feel a little incomplete in rendering a decision on what you're asking. I understand what you are asking for. I'd like to fall back on the people who are the experts in the Town.

Ms. Trillaud gave a copy of the Planning Board resolution of approval for the Finger Lakes Coffee Roasters site plan to Mr. Harter.

Mr. Harter – There is an item number four, "Conservation Board reviewed the project on July 7, 2015 and indicated no significant impacts". Speaking for myself personally, I think it would be really helpful to have someone from the Conservation Board here to weigh in on this application.

Mr. Nearpass – I think it's somewhat of a benefit that they got the DEC's information. Did the DEC do any type of impact study before they grant such a permit? Or did they just go out there and measure where the wetland was?

Mr. Thornton – I don't know. That's a great question. We are kind of kept in the dark. I do know, it might have been Steve Miller from the DEC, I think he may have been the one who came out and looked at the area, made a determination of where the boundaries were. I know he must have made some sort of assessment of the consequences of building this pavement. From

the permit itself they deemed that the consequences weren't significant, but there are a lot of conditions in the permit as well, as to what we need to do as the constructors.

Mr. Nearpass – How far into the wetlands are you? How far do you want to encroach into the 100 foot buffer?

Mr. Thornton – We really don't know. As Alan said, we didn't think we would be encroaching at all into the buffer. There is a check zone where they encourage the developers, the builders, to ask the DEC for input.

Mr. Nearpass – So nobody came out and staked it?

Chairman Maier – First of all the project is about 90% done?

Mr. Thornton – Correct.

Chairman Maier – So the project is about 90% completed. The building is there; the earth has been moved; there is a pile of dirt. There are certain areas that have been flagged with a pink tape which indicates a boundary. There is one by the culvert that passes underneath the road that is owned by the Town. I believe the check area is on the opposite side of the road. What happens is the pavement where they are going to pave, falls off, probably when it is finished it's going to be a culvert to direct water into the culvert underneath the road over into the creek area, the wetland area. There is a road that goes up and then back down again before you even get to the wetland area, that I believe is delineated as the wetland area. I just saw two pieces of tape when I was out there. One was on your western side and the other was across the road on the southern side.

Mr. Thornton – I'm not sure. Charlie are you aware of any flagging out there?

Mr. Nearpass – They delineated the wetland, not the check area, right?

Mr. Thornton – I didn't think they delineated anything. I was out there and I didn't see any flagging.

Mr. Benedict – My understanding is that there was nothing done officially, so there is nothing written down, so they really don't know. It sounded like somebody went out there and paced it off or something.

Mr. Nearpass – As I read the check zone description it implies that there is a check zone that is not very accurate, and if you need it to be more accurate give the DEC a call and they'll send somebody out there and they will give you a more precise indication of where that is. What I was thinking, and I could be wrong, it's a check zone, they came out and they delineated where that wetland is as part of this check zone process.

Mr. Thornton – As I understand it that was done. The delineator came out, but I just don't think he recorded anything. He didn't provide us with any mapping. He didn't make any indication

that he had put flagging up by the limits of the buffer or the wetland area. He just indicated that a portion of the pavement would be in the 100 foot buffer.

Mr. Nearpass – As the applicant, how would you remedy that? You have a gap between the information that you would normally provide to our Board and what the DEC says....

Mr. Thornton – Try to determine how substantial the variance request is, what square footage?

Mr. Nearpass – Right.

Mr. Thornton – We don't have that number.

Mr. Nearpass – But the DEC must. If they were able to say that a portion of that asphalt is going to impact the buffer, someone has to have that knowledge.

Mr. Benedict – What I got from talking to someone from DEC was that it was close. That the 100 foot buffer line was close to the pavement. Close enough that they felt they should issue a permit just in case. They weren't even saying that it was definitely in it.

Mr. Nearpass – That's what I thought I heard you say earlier which was, there is a chance that you don't even need to be here tonight.

Mr. Thornton – That's correct.

Mr. Nearpass – I'm not sure what to do with this one at this point. I really don't feel I have the information required. I understand it's close but I don't know what the variance would say in it. Do we allow a five foot impact, ten foot impact, 30 foot impact, a foot and a half? We have to look ahead to what that variance would say and right now it would say close. I'm not quite sure that would be something I was willing to sign off on without having the facts.

Mr. Thornton – I think what you are saying Al, and that's unofficial, it's just a telephone conversation, what they actually put in the permit is that a portion of the pavement is within the 100 foot buffer.

Mr. Nearpass – How much do you want us to allow you to encroach into the wetland buffer?

Mr. Thornton – That's a very good question. I'm not sure how I get the answer. Maybe the DEC would be willing to put something in writing for us. They didn't with the permit. They didn't put it in writing. I don't know if it's five square feet, 50 square feet, 100 square feet, I don't know.

Mr. Nearpass – In general, if it's a minimal impact, close in my mind, I'm thinking within single digit number of feet. It could mean something different to someone else. In my opinion, I would be in favor of it if I had that number and it was small like that. My recommendation is that we table it until you can get the information and we come back and talk about it.

Mr. Reinhardt – This is fundamentally wrong. I'll tell you why; an applicant who is asking for a variance is supposed to be able to look at a Code, a rule, a regulation, a law, something that says this is what I need to do. Here it is the recipe, whether you're driving down the road and you see a 30 mph speed limit or you're looking at the Code Book and can say I need a variance because I'm within a 15 foot setback, or whatever it is. I'm not hearing from anyone that anybody knows where this boundary is. How do you know if you need a variance or not? You've not been put on notice. The DEC, nobody, knows where this line is. If you don't know where it is and the DEC doesn't know where it is, and all I here is somebody sticking their thumb up and saying it's about over there. That's not fair to you, it's not fair to the public. I'm not seeing any need for a variance in the first place, if they can't tell you if you need a variance or not.

Mr. Thornton – They really don't get involved in the variance. I'm just going by the permit. I think they could have said a permit isn't needed, but in this case they said a permit is justified. I'm not trying to hide anything, they did indicate that a portion of it is within the buffer.

Mr. Reinhardt – I'm not suggesting that they are required to tell you that you need a variance, but what some agency is supposed to do is draw a line on a map and tell you where the wetlands starts and stops, where the buffer line is, where the check zone is. Where is it? It's this moving target of, how do I ask for a variance. I may need 1%, I may need 50%, and if you're in the dark, we're in the dark. I don't see at this point why you need a variance in the first place. I do appreciate you're here and like our attorney was saying you're here in good faith. You're trying to do the right thing. If we don't know where that line is, how can we grant a variance for you? I'm of the position that I don't think you need a variance.

Chairman Maier – I think the other point is that the DEC has allowed the building that has been approved with the conditions that you follow the mitigation guidelines that they have set forth with the permit. They haven't said they can't do it. They've said you can do it subject to these conditions.

Mr. Thornton – That's correct.

Mr. Nearpass – Is the location of the building in question or just the asphalt?

Chairman Maier – Just a portion of the asphalt. I couldn't figure it out either when I went out there. I saw two pieces of tape and they are just hanging from a branch. There are no stakes, there are no other reference points that I could find that would give a surveyor the ability to say here is a line and this is what you work from.

Mr. Harter – I think Mike is right. If we don't have something defined than we can give a variance from, which we currently don't, it begs the question whether a variance is required. What could we issue, how do we judge if the variance is substantial or not?

Mr. Reinhardt – We're going to table it for what? Does anybody have an answer for anything? I don't think tabling it to get more information or you coming back and saying nobody knows where this line is.

Mr. Hou – One possible action you could take is to ask that the applicant just simply withdraw the application. To deny the variance request, or to take no action and allow it to become a default, that would go on the record as being a denial if it ever becomes important for any reason in the future. Secondly it suggests that you consider the application on the merits which you really don't appear to be doing. If the applicant withdraws the area variance application then there is no consequence to that and no determination has been made by you as a Board as to whether or not a variance is required or isn't required and that becomes an issue for a future time when and if that becomes an issue.

Chairman Maier – You are suggesting that that may be the cleanest alternative?

Mr. Hou – That's certainly a course of action that I would suggest you consider. To my mind it seems to be the cleanest, if not the fairest way to proceed.

Mr. Reinhardt – Even if it comes to a time that the DEC decides tomorrow that they are going to officially delineate where that line is. That is still not fair to you, because you have now set the process in motion, the project is now 90% done. They can draw that line all they want.

Mr. Nearpass – Then it's pre-existing, non-conforming.

Mr. Hou – That would essentially be the case. We all know that wetland buffers are prone to move and have redefinition over time, that's just their nature. As of today, if there is nothing that indicates to the applicant that they need to have a variance, then the application is ill put to you as a Board.

Chairman Maier opened the hearing up to comments from the public. There were none.

Chairman Maier – Are you willing to withdraw your application?

Mr. Thornton – What application? (laughter) No, that will be fine, we will do that.

Ms. Trillaud asked the applicant to send her verification in writing.

Mr. Harter recused himself from the next application because he is the site engineer for the applicant.

### **MARK'S PIZZERIA – SIGN (Area Variance)**

6499 State Route 96

Appl. 25-Z-15

Applicant is requesting to place a sign on a roof having a proposed area of +/- 128 square feet whereas approximately +/- 70 square feet is allowed. Section 165-5B(3) states the total area for a sign shall not exceed one square foot for each foot of building frontage and §165-6F states a roof sign is prohibited.

The secretary read the legal notice as it was published in The Daily Messenger on January 24, 2016.

Mark Crane and Joe Kondas from Mark's Pizzeria addressed the Board.

Mr. Kondas – Thank you very much. Am I supposed to go one at a time or am I supposed to cover the whole thing at once?

Mr. Maier – One at a time meaning?

(There are two variances requested).

Mr. Kondas – I would like to go through why we would like to place the sign on the roof. *Pointing to the projection* – Yes that is the front elevation that we are proposing. I did make some changes to it based on the Planning Board meeting that we had last week. They had some really nice suggestions on the corridor and maybe how it would fit the neighborhood a little bit better. We originally had it set as an internally illuminated sign. They thought that putting goosenecks on it would be a better thought and we all agreed with that. We have several signs that are internally illuminated throughout the company and several signs that have goosenecks. We took a drive out there a day after and agreed with what the Planning Board had suggested.

The first variance regarding why we would like to put the sign on the roof, simply put, it's a preexisting architectural condition. As you look at the building there is a gambrel roof that is quite substantial. Due to the fact that the plan is for one tenant, not multiple tenants, when you see the building it just has a really, really big roof. I'm trying to express to you how big that roof is, I think there may be some pictures there. Hopefully this illustrates that it's centered on the roof line and with the gooseneck lighting we think it looks very nice, we hope you do too. We think it looks esthetically pleasing. It does not have a negative impact on the neighborhood.

There used to be windows on the building, three windows, but our plans for building cover those windows and make the whole front of the building roof, instead of the windows.

Mr. Crane – Joe was talking about the windows on the left side of the building, but the gambrel roof actually has windows in the roof that would be...

Mr. Kondas – Currently, if you look at the roof, there is a window here, (*shows three windows on poster board*) and there is also a main entrance. The entrance is being rebuilt to be a window. The windows that are up there now are being covered during the build. So there is a really big space there for the roof. Again, esthetically we think it looks great, but we were hoping to get a variance to say we can put the sign on the roof.

Do you have any suggestions or comments?

Chairman Maier asked the Board if they had questions or comments.

Mr. Nearpass – Do you have any picture of what it would look like if you adhered to the Code in terms of the size of the sign?

Mr. Kondas – Yes I do. As we get to the size, I have two visuals that show you exactly what that is. (*Showing poster board*) This is the front with the compliant sign. This is the side with a compliant sign. Also visuals here, as you approach left and right. As you approach from the west and as you approach from the east with the compliant signs.

Ms. Morley asked the applicant to put the compliant sign and the proposed sign side by side.

Mr. Kondas – This is the compliant sign and it is right to ratio with the building, being 70 feet, that's going to be within an inch when it actually goes up. I do this for all the signage for Mark's. This is the compliant sign and this is the proposed sign. Now, the compliant sign on the front is allowed to be 70 square feet and then the compliant sign on the side is allowed 58 square feet. These two signs are compliant. Frankly from this side here it really doesn't look that bad as you approach from the west but as we drove the neighborhood and started to take a look at what it would visually look like as you approach from the east; we took this shot here so this telephone pole wasn't in the way, as you back up just 100 feet, this sign is really, really small. We have about 50% of the traffic that is approaching from the east and 50% from the west. What we did, we took the two allowable square footage areas, being 120 square feet and we combined that to be the proposal of 127.76 square feet by your rectangular formula you use in Victor.

Mr. Nearpass – If you were to be fully compliant, there wouldn't be a sign on the roof. Al, would it be a monument sign like the Advent Auto type of sign? What's really required to be compliant?

Mr. Benedict – To be compliant it would have to be a sign down below the roof line. He would also be allowed a monument sign.

Mr. Nearpass – A monument sign would be allowed also. Have you considered a monument sign? It would be closer to the road and visible coming either way on Route 96. Advent Auto, there are a few other places that have a monument sign. That's generally what is used.

Mr. Crane – Matt, the reason why we did not want to go with a monument sign was simply because it looks kind of like a barn and we're just trying to cover some of that roof up. We didn't really consider the monument sign. If we had to, we could, but we're trying to warm up the building to make it a little more appealing to the customer.

Mr. Nearpass – I would think there are other things you could do to the roof. I don't want to plan your architecture, bump out windows. If the goal is to not make it look like a barn, I'm not quite sure...

Mr. Crane – We just felt that it looked very warm and appealing for the customer driving by it. It looks like the Mark's Pizzeria. In Henrietta we had the option to be able to put the monument sign there also, but again, because the building was so large we preferred to put it on the building. We feel that it really makes our brand look better like that.

Mr. Kondas – Every preexisting Mark's Pizzeria always has a sign on each one of the buildings.

Mr. Nearpass – How many of them are in barns?

Mr. Crane – Just one other one.

Mr. Nearpass – That's the one in Henrietta?

Mr. Crane – The one in Henrietta was an industrial commercial building. It didn't look like a barn but it was a very square large building, 170 feet long, and the one in Fairport looks almost identical to this one. The red building in Fairport on Route 31.

Mr. Nearpass – The challenge for here is that you really haven't considered what's allowed by the Code. Obviously these variances run with the building. I'm not quite sure that due diligence was done in terms of evaluating what's allowed and what's not allowed.

Mr. Crane – We could put the small signs on the building, it's just that we prefer not to.

Mr. Nearpass – There are two variances, one for the sign and one for the sign on the roof. I don't think there is any room on the front of that building other than going on the roof line. Which is also certainly....you are eliminating windows on the roof line and there are probably other things you could do there to bring it under compliance. I'm not seeing that as part of the application. What you are telling me is that that really is not an option that you want to explore. The monument sign, which I think is fairly common throughout that district and what other business' are using to put their mark in the neighborhood. It might not be what you want but it sounds like you really haven't thought about it as much.

Mr. Crane – We've thought about it quite a bit. We talked about it. Like I said we talked about it in Fairport, we were allowed to put a monument sign in Fairport too and we didn't do it. We just don't put the monument signs up unless we absolutely have to. We did put some thought into it. We just really like this sign.

Mr. Reinhardt – Clarify for me why there are pictures of a sign on the side of the building if we are only talking about the dimension of the sign and the sign being on the roof?

Mr. Kondas – There is a new approach, and these are to scale as well (*poster boards*). This is allowable by the Town; these are the compliant signs. As you approach from this side (*from the east seeing the sign on the side of the bldg.*) the sign is 58 square feet and it's also on the road. We are allowed a 58 square foot sign here by the Town's dimension of a rectangle.

Mr. Reinhardt – I just want to clarify then, what you are asking for. You get the sign on the side of the building and you want another sign, bigger, on the roof.

Mr. Kondas – Yes.

Mr. Nearpass – You are allowed a sign on both sides.

Mr. Reinhardt – That’s where I’m trying to go. You are getting what you are entitled to per the Code. The sign on the side of the building. Now you want more signage; I understand you are entitled to have a sign on that Route 96 side, but you want it larger and it has to do primarily with the size of the roof line. Correct me if I’m wrong.

Mr. Kondas – The size of the roof line, correct.

Mr. Reinhardt – What I also see is what you have is – The roof is defined as a roof, maybe Al can help me, because there are roof shingles on it. If there were no roof shingles on it, if there was siding going on up to the upper portion of the angle, it wouldn’t be a roof anymore. Is that right Al?

Mr. Benedict – That’s correct.

Mr. Reinhardt – I’m wrestling with that. If you would, or wanted to, I’m not saying you should, if you wanted to you could take all the shingles off and put siding up there and now it’s the side of a building. I think I can be flexible with going with that analogy of it could be a side of a building if you wanted it to look like that, but for the shingles being on it. For me the troubling spot is the size of that sign. If I were to again, vote for a variance, I would say try and limit it to that height that you’re looking at so it doesn’t go up onto the roof, but go with the sign that would be a compliant sign that’s on the side of the building that you are entitled to.

Mr. Kondas – You’re saying, don’t put one here, put it here?

Mr. Reinhardt – No, let me try again. You’re entitled to have a sign on Route 96. To have that sign the size to be compliant with what you’re entitled to. My vote would be denying the variance for the extra size, but granting the variance on the roof. How high is that up in elevation?

Mr. Kondas – I believe the bottom of it is 14 feet.

Mr. Reinhardt – I would find a way, craft some kind of restriction to say it can’t be any higher than 14 feet, so it’s not to be on top of that building. That would be my analysis of the problem.

Mr. Kondas – Would it be OK if I clarify a bit. I’m not an expert. I looked and I read as much as I could about the corridor and drove the neighborhood. The amount of time we spent driving and looking, finding out where the border was, at least on Route 96, was pretty substantial. It was myself and the gentleman I work with. We found a couple of buildings that we thought were a blank and we read into those and we kind of crafted it after one of those where what we are asking for is yes, on the roof. We don’t want to go too high. We would love for somebody to sit there as the crane goes up and tell us where to put it. It’s almost what we did in Webster because they had the same thing.

Mr. Crane – Friendly’s building was just like that.

Mr. Kondas – It was the same thing there where they said, we don't want it way up. No problem, just tell us where to put it and we're fine with that. What we would like to do officially is forgo this sign and combine the square footage of both allowable signs to just have one sign on the building here (*on the roof*) at a height above the ground that is OK by you.

Mr. Reinhardt – I don't think we can do that. We've been down this road before. The Code allows you to do it. We can't tell you not to do as permitted in the Code. That's what you are asking us to do, have a two for one? Here's potentially what happens. If we grant the variance for what you're asking for and then you sell the building, you've heard it before, that the variance runs with the land. Somebody else can come along and say, oh I can put up another sign and pop it on the side of the building. Now there are two signs and maybe that's not what this Board potentially intended to do.

Chairman Maier – The other consideration too, when we start permitting things like that, we start setting a precedent which makes it very difficult for the Board to deal with similar applications down the road.

Mr. Kondas – I think the precedent that I, at least, after reading hours and hours, the closest thing that I could find was the City Mattress Building. There were multiple tenants that were at least by the Zoning Board approved to allow a bigger sign on one side. I think it was April 4th, 2011. I was reading in those notes that a similar type of thing took place. I thought that maybe that would be something that you would be open to. It doesn't sound like that is something you would like to do.

Mr. Reinhardt – Your percentage of delivering and your percentage of in house service. I always thought that your business was primarily delivery. Can you clarify?

Mr. Crane – Mark's Pizzeria, over the last five years, has started to build these sit down places. We used to always be carry out only with no tables. Now that we are putting the 15 tables inside and the six tables outside, it's changing to be more like 50/50 now, or 55% and 45%.

Mr. Reinhardt – There's your business plan, that you'd like it to be a 50/50 operation here. 50% delivery, 50% sit down.

Mr. Crane – What we hope is, it doesn't always become a sit down for the family. Lots of time school kids come down for lunch time or construction guys come at lunch time. It isn't really a night time dinner thing.

Mr. Reinhardt – I hope the kids aren't coming that far from school just for lunch. That's a hike.

Mr. Crane – That's what I'm saying, some locations, like in Penfield, the one we did there, it's very close to the school. We just never really know. I'm hoping this one will be at least 60% - 40%.

Mr. Reinhardt – Which way?

Mr. Crane – 60% delivery, 40% sit down. That's what I'm hoping for. The other thing about the sign is, if that sign is too big, because we tried to put the signs together, we'd be willing to make the sign smaller. It doesn't have to be 128 sf. We could make it 110sf, 115sf, 105sf. I just would really like to have the sign on the front. I'd just hate to have the sign on the two sides because when you come up to the store, you feel like you're walking up to the restaurant. If you think that sign is too big at 128 square feet, we'd be willing to make that smaller also, if that was able to be considered.

Mr. Nearpass – I did like Mike's suggestion of keeping the sign within the Code and us allowing it to be on the roof. It is a unique architecture. It's one of the things we would take into account that the roof could go either way, the way it is. I tell you signage is an interesting debate all the time. I can't tell you the number of business' that come in front of us and say if we don't have the extra two square feet there is going to be no business. It's this line that everybody draws in the sand. We're generally pretty tough in keeping everybody to that size.

Ms. Morley had no questions.

Chairman Maier – I didn't read the minutes from the Planning Board, but you indicated that you had gone to the Planning Board. How did they feel about a monument sign?

Mr. Kondas – We did not discuss a monument sign with the Planning Board. They thought everything looked good and they said they endorsed the project. They definitely said they endorsed the project.

Mr. Nearpass – There is nothing stopping you from getting the bigger sign and putting the monument sign in.

Chairman Maier – Who did the calculations for the signs?

Mr. Kondas – Me.

Chairman Maier – You did it, OK. I like monument signs; from my perspective in terms of safety and traffic and consistency. There are two ways to look at the signs on Route 96 and some of the corridors. One is, those that are preexisting which many of them the Town apparently wants to get away from and then those that are the newer signs, which are the monument signs and the other requirements. What I like about the monument signs is that they are very easy to see. I'm looking at this picture right here and I can see that I can drive down Route 96 either way and I can pick up Mark's Pizzeria, your very attractive logo, easily from a monument sign along with the signs that are permitted. So from the standpoint of what's permitted, there is no question to me that I'm going to find what I'm looking for with what's permitted: the monument sign and the two other signs.

Mr. Nearpass – With it being closer to the road, it doesn't need to be as large.

Chairman Maier – That's exactly it, and that's what we are trying to accomplish with the signs. That's what Ontario County is getting at with their remarks in terms of minimizing the signs.

The other thing that you could do, and this is close to what Mike was talking about, is – are you going to redo part of the roof or all of the roof? Is that roof getting redone?

Mr. Crane – Yes.

Chairman Maier – You could frame, basically what you would do is you would side part of the front of the roof and so while you've got that roof off, what you do is you build a little framing in there with additional siding and put your sign in there. What I'm looking at is within the Code, and what's permitted, you can accomplish, in my opinion, more than adequately what you would like to do. There may be a little bit more expense but I don't know that that extra framing is really that much more, and you're in compliance. Personally, I like the monument signs. You are driving along, they are at eyesight, they are right there, you can see them, and you can see them from a long way. They are very effective.

Mr. Crane – The other thing about the monument sign is that the State DOT (Department of Transportation) right-of-way there is probably...there is an island out there but then there is an additional, it's paved, but there is an additional 15 or...

Chairman Maier – You'd have setback requirements.

Mr. Crane – There are 17 feet. From our site plan approval we are using that area, that's our pass through for the fire trucks, because we have to be able to get around the whole building. I think the one thing about the monument, that's another issue for us, that monument sign would be right in the middle of that driveway. We have the parking up against the front of the building.

Chairman Maier – What's the setback? This setback looks to be about 20 feet.

Mr. Benedict – The setback for a sign? Normally it's 80 feet in the zone (Commercial/Light Industrial).

Mr. Crane – The sign would have to be past the front of those cars.

Mr. Benedict – Looks like he's in the neighborhood of 60 feet.

Mr. Nearpass – From centerline or from where?

Mr. Benedict – No, from the property line to the front of the building. If you try to put a monument sign in here, according to the site plan that was approved and submitted, the sign would have to be on his own property; there is also a 12 foot wide easement that runs across this property, so you would be back almost in the parking spots. You would need more variances for the monument sign.

Chairman Maier – I still think you can accomplish what you want to accomplish with what's allowed under Code with a minimal expense.

Chairman Maier opened up the hearing to the public and no one was in the audience.

Chairman Maier explained that he would pull the Board and see what their thoughts were because a super majority was needed to pass the variance as Ontario County disapproved the sign. Since Scott Harter recused himself a unanimous vote of the Board members would be needed.

Chairman Maier – Ontario County has basically said they don't want any changes to what is permitted. You've seen the Ontario County comments? I'll read them for you.

Mr. Nearpass – The County Planning Board denied it. When they deny it we can overrule the denial with a super majority vote.

Chairman Maier – Final recommendation was disapproval - this is from Ontario County – The sign is on land along a corridor identified by the Board as being a primary travel corridor for tourists visiting Ontario County. Protection of the community character along these corridors is an issue of county wide importance. Local legislatures have standards for signage that allow for business identification sufficient to safely direct customers onto the specified site. It is the position of this Board that the proposed signage is excessive. Excessive signage has a negative impact on community character. That was Ontario County's response.

Mr. Reinhardt – Do you understand why they made that referral?

Mr. Kondas – Basically they are saying it's too big, that it's on the roof?

Mr. Reinhardt – Because it's on Route 96, they are required to give their opinion and we have an obligation to review it; and this is where the super majority comes in.

Mr. Nearpass – In my opinion, I'm not in favor of a sign larger than what is available by the Code. I think it's the 70 square feet I would be in favor of. I would be OK with it being on the roof if we could define where it would go. Also, at the same time our Chairman makes a very good point that I think for a minimal investment you could make that area not a roof. Therefore, you could do almost exactly what you are looking for without any variances whatsoever.

Mr. Crane – Matt if we made the front of the building, like you said, box a piece of it out, like Keith said, we could have the 128 square foot?

Mr. Nearpass – No, you would have the 70 square feet.

Mr. Crane – We can't have the 128?

Mr. Nearpass – I'm just giving you my opinion, I'm not in favor of a larger sign. We have a lot of applicants coming to us for a larger sign and I have yet to really see a good reason that satisfies the criteria in my mind to actually have a larger sign. There is no evidence that people aren't going to know where your business is. You have an existing business that's failing because no one can find it; you had a stack of customer complaints that said I drove by your business two or three times and I just couldn't see it. There are other things you can do that are

well within the Code although it sounds like a monument sign may still require a variance, it's still an option. In my mind, your best interest and the community's best interest would be to have the sign in the size allowed by the Code. I am willing to bend on the roof, because it's somewhat of a unique situation with that structure.

Mr. Reinhardt – Just for clarification I want to make sure I have my measurements right. Looking at the left side elevation and at the back of the building Board you have 19 ft. 12 in., is that right?

Mr. Kondas – Yes.

Mr. Reinhardt – What I'm trying to get at, when I draw my imaginary line over to the proposed sign that is on the roof, the top of that sign, based on your measurements, is that about 18 feet.

Mr. Kondas – Oh, this one, I apologize. This was a picture from (*Mr. Corrini*) that we colored and then I did this. I would like to state for the record that this is not our sign. My oversight. This is the one right here – the allowable footage.

Mr. Reinhardt – Is that about where you want your sign to go?

Mr. Kondas – I think the bottom is, but the top, this sign would be up here. This is smaller.

Mr. Reinhardt – I'm trying to commit you to a number. 17 feet, how high is that sign going to be from the asphalt? Top of the sign.

Mr. Kondas – The allowable sign is 69.83 which means.....

Mr. Crane – Pretty close to 16 feet to the top of the sign.

Mr. Reinhardt – What I would be in favor of granting a variance is a sign on that roofline no more than 16 feet from the paved asphalt.

Mr. Crane – That's not a problem at all.

Mr. Reinhardt – And deny a variance regarding the size. Comply with the Code for the size of the sign, but grant a variance for the sign on the roofline with the sign being no more than 16 feet above the asphalt. That would be how I would go.

Mr. Crane – With the smaller sign that would be easier.

Mr. Nearpass – That makes sense to me.

Ms. Morley – I'm in agreement with Mike.

Chairman Maier – I'm still trying to figure out if it's better looking that way or if it were framed in and redone with the siding.

Mr. Nearpass – Question, if this whole thing gets denied what are you going to do next?

Mr. Crane – I guess my first question would be... I guess I would have to think about it. Al, what's the allowable square footage for a monument sign?

Mr. Benedict – 20 square feet.

Mr. Crane – 20 square feet, very small then. Our logo does not fit into that shape.

Mr. Benedict – You would probably need variances for that as well.

Mr. Crane – And I can't really get it that close to the building.

Chairman Maier – Can I ask you a question while you are contemplating? What do you think esthetically about breaking up that roofline? How would you feel about that?

Mr. Crane – I don't know. On this building we gave up the use of the second floor because we're trying to stay under the 50% rule. So we have given up 50% of the building. That top, I just don't know what's going to happen to that top yet. If you wanted us to build that wall, I guess, I mean I could build the wall.

Chairman Maier – I'm just throwing it out there. I haven't decided how I feel. Roof is not attractive to me.

Mr. Crane – It's a tough building.

Chairman Maier – Just by framing it, bumping it out three or four feet on the top and bringing it right straight down and putting the sign in there.

Mr. Crane – I know what you are saying.

Chairman Maier – Paint it the same color or a different color than what the bottom part is.

Mr. Crane – I just don't know how good it would look because this is so flat. It's almost like a wall, it's almost straight, and it has very little pitch to it.

Chairman Maier – It would actually bump out similar to that sign down below. See where he has the sign on the left side elevation. Do you see that sign, if you framed it like that with overhang and put the sign in there.

Mr. Crane – That would be how it would look. We could do it. Whatever we have to do, we will be willing to do. Usually whatever Town we come into we ask the Planning and Zoning Boards. Like in Penfield, we had to do all kinds of things over there. We just want everyone to be happy, so whatever we have to do to make it happen, we'll do it.

Chairman Maier – I appreciate that. Don't think it will work Mike?

Mr. Reinhardt – With all due respect, some of the problem is, your drawing doesn't really look like this colored picture. You have a bit of an overhang.

Mr. Crane – That's not going to be there, we're taking that out. Where that door is, that's going to be a window.

Mr. Reinhardt – We've said this before, maybe not directly to you, we're not here to reengineer your project. Sometimes we offer suggestions, but when the day is done, it's your project, your business plan, you're asking us for a variance, that's the call we have; yes you do, or no you don't.

Mr. Crane – We'll do whatever we have to do.

Chairman Maier – Do we have the dimensions of the sign. They are written down, a certain number of feet off the ground.

Mr. Nearpass – 16 feet from asphalt.

Chairman Maier – So the bottom of the sign is going to be 16 feet...

Mr. Nearpass – The top of the sign.

Mr. Crane – Not more than 16 feet.

Mr. Nearpass – It's up to you if you want to box it in if you think it will look good, go ahead, if you want to keep it the way it is...

Chairman Maier – Looks like Mark's Pizzeria is going to go up there one way or another. I'm not one to determine what is esthetically pleasing, but I will try to put this into a motion.

### RESOLUTION

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on December 28, 2015 from Scott A. Harter, P.E., 7171 State Route 96, Victor, NY 14564, requesting two area variances at Mark's Pizzeria, 6499 State Route 96, Victor, NY 14564; and,

WHEREAS, the applicant is requesting to place a sign on a roof, whereas, Section 165-6F states a roof sign is prohibited; and,

WHEREAS, the applicant is requesting that the sign on the roof have a proposed area of +/- 128 square feet, whereas, approximately +/- 70 square feet is allowed per Section 165-5B(3) which states the total area for a sign shall not exceed one square foot for each foot of building frontage; 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 published in "The Daily Messenger" on January 24, 2016 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, the Ontario County Planning Board assigned the referral as a Class 2, AR-7 on January 13, 2016 and returned it to the local board with a final recommendation of disapproval; and,

WHEREAS, a Public Hearing was held on February 1, 2016 at which time no resident spoke for or against the application; and,

WHEREAS, after reviewing the file, the testimony given at the February 1, 2016 Public Hearing of the Zoning Board of Appeals, and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for a Mark's Pizzeria sign on a roof at 6499 State Route 96, Victor, NY 14564, whereas, Section 165-6F states a roof sign is prohibited:

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 unique pitch of the gambrel roof is more like the side of a building than a roof itself and simply a roof by the fact that it has shingles on it. The size of the sign will be consistent with what is allowed in the Code.

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: The sign could be put in an alternative location; it could be reframed so that the roof would be like siding; a monument sign is possible. For the record there was discussion that a monument sign would also require a variance.

3. The requested area variance is not substantial.

Justification: The size of the future sign will be allowed by Code and if there were a siding area at the front of the building the sign would be allowed 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: Again, the size of the future sign is allowable by Code and the location of the sign is in close proximity of what would be allowed by Code, the roof being unique in that is more like the side of a building.

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 Michael Reinhardt,

NOW, THEREFORE BE IT RESOLVED that the application of Scott A. Harter, P.E., 7171 State Route 96, Victor, NY 14564, requesting the first area variance of two, to the Town Victor Zoning Code §165-6F, at Mark's Pizzeria, 6499 State Route 96, Victor, NY 14564 to allow a Mark's Pizzeria sign on a roof BE APPROVED:

FURTHER RESOLVED that the following conditions are imposed:

1. That the top of the sign be no more than 16 feet from the paved area.
2. Any lighting relative to the sign be dark sky compliant.

This resolution for the first request of two variances was put to a vote with the following results:

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

Adopted 4 Ayes, 0 Nays 1 Abstention

AND BE IT FURTHER RESOLVED, WHEREAS, after reviewing the file, the testimony given at the February 1, 2016 Public Hearing of the Zoning Board of Appeals, and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for a Mark's Pizzeria sign on a roof at 6499 State Route 96, Victor, NY 14564 to have a proposed area of +/- 128 square feet, whereas, approximately +/- 70 square feet is allowed per Section 165-5B(3) which states the total area for a sign shall not exceed one square foot for each foot of building frontage:

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: Due to the fact that it would be large in size in terms of what is required by Code.

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

Justification: Within the Code there are other options available.

- 3. The requested area variance is substantial.

Justification: The proposed sign is much larger than what is allowed by Code.

- 4. The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Justification: The uniqueness of the sign (architecture, location) and size of the proposed sign relative to other signs in the area.

- 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 Michael Reinhardt,

NOW, THEREFORE BE IT RESOLVED that the application of Scott A. Harter, P.E., 7171 State Route 96, Victor, NY 14564, requesting the second of two area variances to the Town Victor Zoning Code §165-5B(3) at Mark’s Pizzeria, 6499 State Route 96, Victor, NY 14564 to allow a Mark’s Pizzeria sign on a roof having a proposed area of +/- 128 square feet BE DENIED:

This resolution for the second request of two variances was put to a vote with the following results:

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

Adopted 4 Ayes, 0 Nays 1 Abstention

Mr. Crane – Thank you very much.

Agreed upon unanimously, RESOLVED, that the meeting was adjourned at 8:30 PM.

Debby Trillaud, Secretary