

A regular meeting of the Town of Victor Zoning Board of Appeals was held on March 7, 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; Dave Tantillo, Town Board Liaison; Ted Filer; Sue Stehling; Debby Trillaud, Secretary

The meeting was opened and the Flag was saluted.

APPROVAL OF MINUTES:

On a motion by Scott Harter, seconded by Donna Morley,

RESOLVED that the minutes of February 1, 2016 be approved as submitted:

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

Approved: 5 Ayes, 0 Nays

PANERA BREAD – SIGN ON PYLON
7651 State Route 96

Applicant requests a determination of appropriateness to have a hearing to reconsider placement of a panel sign on a pylon that is not on their property whereas section 165-6D states a sign must reflect a bona fide business on the property with the sign. Applicant originally appeared before the Board on November 16, 2015. At that date the request for the variance was denied because the Ontario County Planning Board's final recommendation was disapproval, a Class 2 denial, and the local Board needed a majority plus one vote of their full Board to act contrary to that decision.

Such rehearing may be granted only upon the unanimous vote of the Board.

Chairman Maier – Mr. Filer, I understand you may have additional information or new information.

Mr. Ted Filer of West Hollow LLC addressed the Board.

Mr. Filer – Yes. Let me start by apologizing for coming in last time with a rather ill-considered and not reasonable assumption that this Board would be up to speed on the entire history of this property and all the confluence of circumstances that brought us to where it exists today. I realize in retrospect and in preparing tonight's information that there is a huge volume of data that stretches back almost 20 years to 1997. It was not good judgement for me to assume that you would know all of that data and I did not come in prepared to explain it last time and not having access to that data, I can understand how you reached the conclusion that you did. I appreciate the chance to come back here and explain more fully why we are where we are and why I think that the sign there is something that is needed and justified.

I also wanted to clarify just for point of reference; I have no economic motivation to have the sign placed at this time. My lease with Panera is in good standing and I have honored my obligations by making my best efforts to have that sign approved. I'm here because I believe that the record going back to 1997 warrants that sign being in place and as a resident of the community I do believe it's a safety concern that should be addressed and allowed. I'm here to try and do what I think is right, but I wanted it to be clear that I'm not doing it for money. We're past that, we've got Panera, they are there, I'm all good. I'm here because I think it is the right thing to do.

I have a lot of documents here and I summarized a lot of it. If anyone would care to see source documents I have all of them here. Quite a few, you wouldn't want to photocopy all of them. (Mr. Filer showed his briefcase full of documents).

It's important to note that the location where Panera is was originally a part of a larger parcel of land that was farmland. Around 1997 the Widewaters group out of Syracuse came before this Town and asked for permission to develop their Hampton Inn Hotel. At that time they also wanted to develop two outparcels. One which currently has the defunct TGI Fridays on it and one which has the McDonalds restaurant on it. In the process of exploring those approvals the parcel that I own, which at the time was being operated as a snowmobile and lawn mower store, was incorporated into the planning at the request of both the Town, the County of Ontario, and the New York State Department of Transportation (DOT). In these notes that I have provided here, there are notes from the Town Planning Board, the Town Attorney, the Department of Transportation, and the Ontario County Planning Board indicating that the only way the project would be allowed to proceed is with a unified and common access point. That access point was eventually evolved and determined that it needed to be exactly across from the road that enters what is now the Walmart development, where that traffic light is, and that no other access or exit from the property would be permitted other than at that location. There was a significant amount of wrangling where Widewaters came in and offered to provide that access to the Panera Bread parcel and later removed it from their plans, at which point in time the County withdrew their support and the Town withdrew their support. They forced Widewaters to go back and re-include the Panera parcel into this access plan. There is considerable language in here stating that not having that access would provide a "serious traffic safety concern". That's from the Town. The DOT has "serious safety concerns" by limiting access to that easement which would be addressed and they considered to be part of the overall traffic mitigation plan. Victor Planning Board has said that "Widewaters must provide access to the Johnson Parcel at the same light". Which references that light at the standard intersection. These are all in the notes here and I have provided, on the following pages, photocopies which show the exact quotes and where they come from. They were all taken under oath in preparation for the lawsuit that Widewaters subsequently filed against the Town. Having agreed to provide access to the Panera

parcel, they later sued the Town claiming that that easement was an unfair taking of their land. Even though they volunteered it and then agreed to it, they later claimed they were forced into it. That's the lawsuit that was filed against the Town that I wound up getting resolved. In the resolution, Widewaters, myself, and the Town Attorney, predecessor to this current attorney, signed that agreement. That agreement specified that the access to the Panera parcel would be granted and that access to the sign panel and placement of the sign would be permitted and that was signed by Widewaters and the Town Attorney.

I don't know exactly how the panel got installed without the proper permission. That was Panera's sign company just going ahead and doing it. I had not been aware that that sign wasn't approved. We did not mean to install it without permission. That was clearly an oversight.

Again, without having to read you 40 pages, which I'm happy to do if you'd like. I can answer questions, I can start reading my notes. The first three or four pages outline the whole situation that I have just been talking about with specific references and quotes. I've got at least three of each governmental body stating that this is a traffic mitigation plan, it's a safety concern, that a unified and common entrance is the only methodology that will be accepted by the Town, County and DOT.

When we were developing, Panera went back to the DOT and asked yet again for full access to the Panera parcel off Route 96. We've provided in these documents, in writing, their denial of that and the agreement that only a right turn in, which would cause no cars to pass across a lane of traffic would be permitted. So no right turns coming out, no left turns coming out, only a right turn going in would be allowed.

Given all of those circumstances we really have no choice but to use the main entrance which resides on Widewaters property. Because that is the main entrance, we feel it's important that traffic, especially southbound traffic, find a sign identifying what they are trying to get to so they don't miss the entrance and jeopardize traffic safety by making corrective action to reenter either illegally through the right turn in by making a left turn and crossing lanes of traffic or trying to do an illegal U-turn. We submitted some pictures showing that there are no U-turns permitted along Route 96. The only way to get to legally correct, would be to leave the road, enter into a parking lot at EastView Mall or the K Mart Plaza, turn around, reenter traffic, and come back from the other direction which would be a lot of driving and something that might force a driver to take a more abrupt decision to make a U-turn. That's speculation but the fact is we were forced to have one common entrance and we think that there should be a sign there directing customers to the business that is using the entrance.

Mr. Nearpass – What is the substantial new evidence that you have? We talked about a lot of the information just presented.

Mr. Filer – I consider the substantial evidence the written documentation that the Town, the County of Ontario, and the New York State Department of Transportation insisted upon a common unified access as part of a traffic mitigation plan for the development of the overall parcel, including mine.

Mr. Nearpass – Since then you have also added another entrance, you got approval for that. Where does it specifically talk about the sign? We are talking about the sign, not the entrance.

Mr. Filer – The only reference specific to the sign would be in the settlement agreement that was reached between the Town, Widewaters, and myself.

Mr. Nearpass – Where is that in the package?

The reference in question was found on Page five of the settlement agreement and was highlighted.

Mr. Nearpass – I'm going to read it. "Adjacent owner shall be permitted to install signage on the existing monument sign located at the entrance to the existing private drive on the New York State Route 96 identifying tenants located on Adjacent Owner's Land provided it obtains all governmental approvals required therefore and proved that the size, style, type, and materials of such sign are similar to the existing panels located on the sign as determined by Developer in the reasonable exercise" etc.

I would look to David for legal interpretation of that. What I'm focusing on is the "provided it meets all government approvals". Is this really something for... the Town Board, in a second, could say, put the sign there because Jack Marren signed it and agreed to it? Is it a matter for our Board or the Town Board based on the agreement?

Mr. Hou – I think that the language that we are looking at is deliberately not specific as to what approvals and leaving it open to whatever regulations are in place at the time that an application is ultimately made with regards to signage. In this case nothing has really changed in that regard. It was, and always would have been here to the ZBA to the extent that they needed a variance or any other type of approval. It's not intended to change the existing regulation or regulations that would apply to signs going up.

Mr. Nearpass – So you don't read this as a trump card going over the Zoning Code.

Mr. Hou – No, and I don't think that the applicant is saying that either, but is pointing out the fact that it was contemplated..., I think the significance here is that it was contemplated by the parties to this settlement agreement, at the time it was entered into that a uniform singular sign was something that was to everybody's inclination or acceptance at that time.

Mr. Nearpass – As well as one point of entrance to the parcel.

Mr. Hou – I can't speak to that if that's what it says, but this is talking specifically about the signage.

Mr. Nearpass – I'll let everybody else ask questions, but to me this relatively... this is a critical piece of it. Is it substantial or not? If we had this the last time we met would this have changed or altered the discussion or the decision that was made?

Mr. Hou – I'll add one last comment with regard to the deliberation. Obviously, as a Board you have broad discretion to determine what constitutes something that's substantial or significant enough for you to consider a reconsideration. That might include, in addition to substantial evidence, a substantial change in circumstances or mistake of law or fact that significantly affect

the prior denial; just reading from the statute. However, you want to couch your reasoning as long as it is based rationally on those type of factors you are within your discretion to do so. I'll let you determine that.

Ms. Morley did not have any questions.

Mr. Reinhardt – To continue on with Matt's thoughts; I understand the potential concern that language in an agreement is in theory direct, what could or should happen with the area in question. What is very troubling to me is that a Town or something other than the Zoning Board whose function is to look at the Code and when there is an issue of a variance is to decide whether or not a variance should be granted. Here it is potentially that there is language, I think to your argument, that this language overrides the Zoning Board's power and authority to review and grant a variance. I just don't think that's possible. It can't be done that way.

What I see is everything that you've said and I think I understand it. What's also troubling to me is a lot of discussion has been going on about access. Then there is this leap to signage. Access and signage are two different things. I don't think you are arguing that you or Panera has been denied access to that property via everything that you have negotiated for. I think what I said last time was that there was some negotiation that had gone on over a piece of property that you don't own. I just don't think we should start opening up that Pandora's Box to say that even though you are close to the property you should be able to put up your sign on somebody else's property even though you negotiated with it, and override the Town Code.

Mr. Nearpass – Isn't this really saying it's allowing you to put a sign on Widewaters asset? Not assuming you get the approval; even if you got our approval for example before, if this wasn't in here they could say "You're not going to put a sign up on our asset". I feel that this is what that is covering. If you have the local government's approval, then you are allowed to place a sign on somebody else's asset.

Mr. Filer – This was a three way agreement, with the Town being involved. Remember the Town was involved with this easement and approving Widewaters' Development only with this easement that feeds my property in place before there was any contemplation of developing my property. The point I'm trying to get to first, is that is permission from the developer and it is acknowledged by the Town by the signature of the Town, but it clearly says I need the Zoning approval. I don't think that anybody is trying to usurp the ZBA's position but only let the ZBA know that all the parties are in agreement: the Town, Widewaters, and myself are in agreement that we would put a sign there. We still need the necessary approvals which is why I'm here and I can't just have the sign up there. One of the other important facts is that it isn't on my property but that's a hardship not created by myself. That's created by the Town's ultimate approval that there be a common access point as part of their traffic mitigation concerns, well before my property was ever developed. Now, to have logic apply, that we would want to have directional signs in place at the common entrance point is what I'm left with. I can't put the sign on my own property and still direct people to the only entrance which the Town's decision of a common entrance, and the Town, and the DOT...

Mr. Reinhardt – But you do have signs on your property.

Mr. Filer – But they don't direct you to the entrance until you've gone past it.

Mr. Reinhardt – I've been there a few time with my wife, she loves it. It's packed. I don't think anybody is having trouble finding it.

Mr. Filer – Well perhaps there are plenty of people coming from the north that are finding it but that doesn't mean the people coming from the south aren't going to have trouble finding the entrance. They have more business than they need, but that doesn't change the fact that anyone coming from this direction going that way will miss the entrance. Whether it's packed or not, they still don't know how to get into the parking lot and find the business.

Mr. Reinhardt – I think everything that you presented so far, from my opinion, and I appreciate more detail, but there isn't anything else that I'm seeing that is changing my point of view that I had before. It's the same critical issue, you are asking to put a sign on someone else's property. That's a big issue for me.

Mr. Filer – Because I was required to put my entrance on someone else's property. I wasn't sure that was clear before, I thought that was a new fact that's now proven.

Mr. Reinhardt – I understood. The hurdle that I think you have to come over is that substantial piece or pieces of evidence that wasn't in front of the Board. It's the same body of facts, it's greater detail, but nothing has changed, I don't see it.

Mr. Filer – I didn't know that there was a confirmation before that it was a requirement that I use that entrance not a choice that I made. I was required to use that entrance.

Mr. Nearpass – I thought you were allowed to create a second entrance.

Mr. Filer – Only for a right turn in and no exits. Only for an entrance coming from the northbound direction.

Mr. Reinhardt – I'd like to hear what the rest of the Board has to say about it.

Mr. Harter – I wasn't aware of this particular highlighted paragraph. I would say that that is additional information in support of the applicant's/representative's position. As you recall I was in favor of the variance being requested. I noticed since this application came through, when you were here last time, I took particular attention looking at the site. I noticed that it is confusing for drivers that are northbound to make the left had turn into where McDonalds is versus making the turn which is only allowed right in coming from the north. I think this is a unique situation, a unique piece of property. The last time this came up I was in favor of the variance, I would be in favor of reopening it again. I understand that there needs to be a majority of the Board that feels the same way. I just think we have an anomaly here that we come up against every now and then. I think this is it. I don't know if anyone else has taken a look at left turns going in, but I think the way it is depicted in the photographs that you put here is exactly the way it is.

Mr. Filer – Yes, if you have these photographs they'll show that from the Thruway entrance, as well as from the entrance to the left turn lane, without the Panera sign there, there is no visibility. That's the Panera building there and you can't tell what it is. Once this sign is removed you won't know that there is a Panera there from any of the access points that are available until you are well past it.

Mr. Harter – Presumably a car shoots by there, misses the turn, assuming they comply with law which a lot of them didn't that I saw and they did try to make left turns in there...

Mr. Nearpass – Is that with or without the sign in place? The sign is there now.

Mr. Harter – Presently I've seen people trying to turn left into that. Yes, you are right, the sign does exist, but depends on how you want to look at that. Another option would be for the applicant to try to press the DOT into rethinking the ability to allow left hand turns in there, but I think Dave Goehring in his letter from the DOT clearly says that a right turn in is all they are going to give you. I think this is a very unique situation, unique piece of property in the Town of Victor and I think the purpose of the Zoning Board is to offer relief when it's been demonstrated that the relief is necessary. I think the relief is necessary for this property.

Mr. Reinhardt – Relief on their own property. You are stepping into somebody else's property. Where is that line then if the monument, what he's asking for, was 100 feet, 200, feet, 500 feet down the road, it's a slippery slope type argument. Relief in my mind for variances is on the individual's property. He's not talking about putting a sign, I understand it's a strange way to get into Panera for the northbound traffic. That's not what he's talking about, he's talking about putting a sign on somebody else's property. He negotiated a deal with somebody else to put a sign on somebody else's property. That is fundamentally beyond granting a variance.

Mr. Filer – If you look further up the road, the BJ's sign is out by Route 96. It's a half a mile off of BJ's property, on the property that belongs to City Mattress.

Mr. Reinhardt – You are pointing out a fact, but I don't know the particulars of whether BJ's or whoever owns that property, if it's theirs or...

Mr. Filer – It is not. It's a separate parcel, I verified that with the Town. The sign was installed before the Code existed not allowing signs to be off of the owner's property. It pre-exists.

Mr. Reinhardt – It's a different animal then.

Mr. Filer – I'm saying that it's not that uncommon. There are a number of signs within a couple hundred yard of my property where the signs are off of the property of the owner.

Chairman Maier – Part of the issue is that Ontario County Planning Board was not in favor of the sign.

Mr. Filer – You have to understand that they have never approved a sign variance ...

Chairman Maier – That made the vote a little more cumbersome at the last meeting. I don't know what kind of input you have requested from them or New York State DOT. I think one of the things we talked about at the last meeting was we would reconsider it if you could provide evidence of a safety issue or there was something compelling to look at again. I don't know how the rest of the Board feels, but I have to ask the question, have you talked to New York State DOT, have you had them out there to take a look at it to get a recommendation from them? Have you consulted with an engineer, I think it is Costich that was used, to see if they could come up with...? I understand the purpose of the signs, I voted for it, I agree with Scott, but I think that there needs to be something a little more compelling than what we have had presented to us before and maybe even tonight. Have you consulted with Costich or New York State DOT in terms of an opinion from them or Ontario County Planning Department?

Mr. Filer – Yes, I was given a response, basically, Ontario County said that they would consider it again if we got back on the docket here, it would be referred back to Ontario County and I would go and make the presentation. They weren't able to consider my question without it coming through in that direction. If I'm denied here, I never get to go back to them.

Costich suggested that the only opinion they could give, not being traffic experts, would be just that, an opinion about the commonality and necessity of identification at the point of access to streamline the flow of traffic, but they don't have the necessary expertise and that we would have to find a traffic consultant who specialized in sign placement. I did not go down that road. That estimated cost was several thousand dollars. I have to say after researching all of this and coming up with this, obviously I was wrong again, but I thought that I had enough information to come back, so I did not invest the money in that process.

Chairman Maier – New York State DOT; I think you have correspondence from them, I believe it is to Costich that's in the material we have.

Mr. Filer – Yes, Costich was representing me at the time.

Chairman Maier – I think that New York State DOT rendered an opinion regarding access and what they were looking for.

Mr. Filer – I asked the DOT for their commentary because the sign in question, the Hampton Inn sign, is actually on the DOT property. It's an easement that they actually granted so that's not even on the property of Hampton Inn that owns it. It's really on DOT's property and the Hampton Inn, Widewaters, have control of it by virtue of the easement the DOT gave them. They said we gave it to them because that's where they need to have their sign but they weren't going to write a letter that codified their actions as a fact. I guess they didn't feel they had enough evidence to back it up. They're the DOT, they don't want to put their name on something if they can't back it up. They were of the impression that the action spoke for itself. I didn't get anywhere with them. They look at it as a safety concern and all of their letters are addressing the safety of a unified common access and not making turns. They don't concern themselves with signage per se. Maybe I didn't ask the right questions, but I didn't get an answer that would have been helpful to me here tonight. It wasn't negative either, it just wasn't anything in writing; it was conversation.

Mr. Harter – Being in the business myself and putting myself in your shoes I'm wondering if it might not be beneficial to you and the Board in terms of getting additional new information that would shine a different light from the original application and that might be some type of opinion letter from the DOT today, versus the timeline that I see in this packet here. Since Panera has gone in perhaps the DOT, Dave Goehring, has seen things the way that we describe and perhaps they would be willing to issue a letter identifying their take on the value of the sign with respect to safety. For me that would be a new piece of information that I didn't see in the other application and something that would, in my case, make me vote even stronger in the direction that I originally voted. Perhaps it might have some value or benefit to those members of the Board who didn't feel that way originally. That's just a suggestion I might have if I were in your shoes.

Chairman Maier – The other issue is let's say we all voted in favor tonight, you still have to go back to Ontario County. I would assume it would be worthwhile to submit evidence or information to Ontario County indicating that this is why we want to do this, this is where the value of the sign is.

Mr. Nearpass – If I understand the timeline correctly, you have this agreement, the one that we just talked about that has the signage in it, for the single entrance. Was it agreed to and signed knowing that there was going to be a second entrance for the right turn, in only?

Mr. Filer – Yes.

Mr. Nearpass – So in this agreement it talked about a right turn only in to the property? A second entrance?

Mr. Filer – I don't think it talks about it, but it was known by all the parties that we would have the right turn only and that that was insufficient access to operate a business and that this main entrance was required both for exits as well as entrance from the other direction.

Mr. Nearpass – To me what adds to the confusion with the site is that right turn only. If you go by it there is this opportunity to go in. It's just not clear, versus if it didn't exist you would have your single entrance. I'm not a traffic expert but you would have only one way to get in. Not, hey I just passed it... because the people are taking the left into it now. The sign is there and either it's just not working... because as you come up to that site you are not going 10 miles per hour. That particular right turn only in I think presents a second opportunity for people who may have missed it. I'm not sure how to help you with that particular situation. That's just how the site is. On the substantial side, I know you mentioned pre-existing non-conforming examples around the area, that was known and that hasn't really changed the application or the evidence. I'm struggling to see what is substantial here. The agreement really just says you have to adhere to the Town Code, which you did. You came in front of us, you pled your case, you presented as much information as possible, we all asked good questions, it just didn't end up as an approval. I don't see what's truly a substantial change or substantial new evidence that is in front of us.

Mr. Filer – Again, I made some assumptions that the Board was not aware of the fact that that wasn't my choice, to share that entrance with Widewaters. My choice would have been to have

that right turn in be a full entrance with my sign on my property. That was my choice and it was denied to me. I didn't know if you knew it was not a decision, it wasn't that I did it because it was cheaper, there was already a light there, there was already a road; it wasn't an option.

Mr. Nearpass – It's the site you got. It was a difficult site. It's relatively unique and in many ways I think the Town has helped out a lot because it was a unique site and....

Mr. Filer – This Board was fantastic. You gave me the variances that I needed to go forward and complete the project.

Mr. Reinhardt – I'm hearing more about the sign and the rationale and the reason for the sign is safety. That seriously troubles me. Traffic signs, DOT signs are for safety. You want an advertising sign and you are trying to suggest the reason why that advertising sign is there is for safety. That poses a whole bunch of liability questions in my mind. I deal with this stuff day in and day out. To make an argument that an advertising sign is going to be safer for traffic patterns is a leap beyond a canyon. What I also don't hear is that if there were substantial evidence that the reason why the sign should be there, to me more compelling would be Panera can't do business there, they're losing money. I think people who go to a place like that, whatever that spot is, that destination, they might miss it once, but after that *they know how to find it*.

Mr. Filer – We discussed this last time for locals but we are 300 yards from a Thruway exit and those people will be on their phone looking for a place to have lunch and they will not know. They're not local, they won't have that knowledge, their first time will be their only time.

Mr. Reinhardt – You are saying that for one time that people can't find it, it's this catastrophic event, that's not enough for me. To equate a commercial sign is necessary there for a safety requirement is just beyond my logic.

Mr. Filer – I'm not trying to be argumentative but I'm not saying that they won't find it, I'm saying they'll find it after they've past the safe entrance and will be forced into an unsafe option.

Mr. Nearpass – They will be forced to go into the mall and turn around. The only option isn't an unsafe option.

Chairman Maier – We can argue it, but the point is if we had evidence to show one way or another, it would be helpful for you. We don't have that.

Mr. Nearpass – I think Mike's point is a good one. If he had evidence that it's an unsafe situation, you need to put a safety sign there. The remedy isn't more marketing.

Chairman Maier – The problem is that the sign is there. We don't have evidence with the sign not there.

Mr. Nearpass – Even if you had the evidence, I would probably still argue that it's not substantial in this case because this sign that we are talking about here, Mike makes an incredibly important point. It's for marketing for the business, it's not for safety. Even if you had all the evidence in

the world that said without this marketing sign we have this issue, I think you'd be having a better case with the DOT putting a safety sign there.

Chairman Maier – I disagree, there is value to signs. It does help eliminate conflict. It's pretty well documented that it does help, but we just don't have that in front of us today.

Mr. Nearpass – When there is a safety issue, I don't think the answer is more marketing.

Chairman Maier – I'm not talking marketing, I'm strictly talking reducing conflict.

Mr. Nearpass – I understand that there is a dual usage aspect of it, but if public safety was truly the issue at hand you wouldn't be here asking for more marketing.

Mr. Filer – Matthew, let me ask you, you're considering marketing, but McDonalds is right next to that sign and there are signs all over the building and they still have one on the pylon and I believe the purpose of it is to direct people where to enter. It's not additional marketing. That would be superfluous from their location.

Mr. Nearpass – I believe it's because they expand to what they are allowed to from a signage perspective. If we gave them the opportunity to put up six more signs on that site, there would be six more golden arches there. I don't think they are doing it in the name of safety for the community. I think they are doing it to get their brand out. You're right, establish their location, but they've got plenty of signs around there as well. I think if you allow companies to put as many signs on their property, they'll expand into that vacuum. You wouldn't imagine the number of applicants we get that talk about their sign needing to be a foot bigger. Almost every time they go to safety. The second they realize they may not get that extra foot they go to public safety.

Mr. Filer – Panera has not yet used their maximum signage, just so you are clear on that. They have the opportunity to put a second marquis sign up, but it's on the wrong side of the building. It doesn't help visibility from this direction, but they haven't put up the maximum allowable signage for advertising.

Mr. Nearpass – I'm not telling you that they shouldn't. They have the opportunity to maximize...

Mr. Filer – I'm just saying that maybe this isn't the same as your interpretation of McDonalds where they are just after maximum marketing exposure, because they haven't done that.

Mr. Nearpass – You brought up a good point, maybe it's on the wrong side of the building and they don't see the return on that, but it's not for safety. I think Mike brought up a very good point and I wasn't even thinking along those lines earlier.

Mr. Harter – I think on the other side of the coin, I think it has the potential to reduce... If I had to link some component of safety to this, I would say that it reduces driver confusion. If I am that out of state person and I take the Thruway and I want to get off and go to Panera, I come off and I don't know about this right turn in and I don't see that sign and I head on down and I do see the

sign and then I'm trying to make a left hand turn into a right turn only. I think in terms of driver confusion, there is the potential for a safety issue there. I would disagree that safety cannot be tied to the sign which is probably, in my opinion, more directional than marketing.

Mr. Reinhardt – If you had 10,000 vehicles going back and forth over that area and two people said, I can't find it, this is dangerous, is that enough of a level to say this is a safety concern? When do the numbers show? Zero is not enough, but is one enough out of 10,000?

Mr. Nearpass – How long did it take for that stoplight to go up there at the Thruway where the Thruway T's into Route 96? That took a dozen years, more than that?

Mr. Reinhardt – I'm hearing out of state drivers and to me that is such a small fraction of the number. Metro Rochester people are relatively familiar with the East or Eastview Mall traffic patterns. It can be difficult, I appreciate all the comments.

Mr. Filer – I don't want to argue because the last thing I want to do is be oppositional and have to come back again and be the guy that argues with you. I went through the criteria for a zoning variance change and some of them were does it create an undesirable change and is it substantial and my counter to that whether it's one or two cars out of 10,000 is this is a panel that is the same size as the other panels on the pylon and the pylon exists. We are not adding any additional lighting. We are not adding any additional visual clutter. There is one more panel on a sign that already exists and it is two feet by four feet just like the ones above it. It's not much to ask for and trade off, even if it is one or two cars crossing against traffic where they shouldn't be. It seems like that's not a substantial concession to make to help one or two people who are not familiar with the area find their way. Can it be achieved by other means? We don't have other means to identify our access to the entrance, so it has to be off of my property because that is where the entrance is. Does it create an undesirable change? It's the same size as the other panels, there is no additional groundwork, there is no additional lighting installed. Is it substantial? It's the same size as the McDonalds, Panera, Hampton Inn, it's just one more panel on a tower. Is it self-created? No, it's not. The unified common entrance was dictated by the Town, County, and the DOT together. I believed when I came back that I had documented all of these reasons and shown that I had met the criteria. I apologize if I've wasted the Board's time by being unprepared yet again to bring anything new and substantial.

Mr. Reinhardt – You're not wasting our time.

Mr. Filer – I went through it line by line and I have letters from neighbors and I got the original DOT that you could only have a right in. I thought that was all new information, that I wasn't just making that up or it wasn't just a choice. This is what was done since 1997 by this Town, this County, and this DOT.

Mr. Nearpass – It was all information that you told us you had and we took it face value that the applicant had it. You didn't have it with you but I think we took the fact that you said it existed into our decision. We generally do prefer that people say if they have something it's physical but I don't recall that we disputed that the agreement existed.

Mr. Filer – Again, I apologize if I have come less than well prepared again.

Mr. Nearpass – This is a healthy debate.

Chairman Maier – This is not a public hearing but I will ask if there is anyone in the public that does have anything to offer, since we do have someone in attendance.

Sue Stehling from the Town of Victor Historic Advisory Committee introduced herself and said that that was what she was in attendance for.

Chairman Maier asked if there was anyone else who had something to say, there was no one.

Chairman Maier – I have procedural issues David. We can vote on a resolution tonight and I think I have a feel for the Board's decision. The consequence of that to the applicant is what?

Mr. Hou – Procedurally there has to be a motion to grant the rehearing or reconsideration. There has to be a motion that is acted upon. If you don't have a motion or if you want to consider leaving the applicant with the opportunity to come back with more information it's certainly your prerogative and you can make a motion to that extent as well. If you are going to rule substantively on this consideration tonight than you just need to have a motion that has to be seconded whether it's for or against reconsideration and proceed in that fashion. If it's a denial, if you deny it because you don't have unanimous approval that ends the reconsideration opportunity for the applicant. He can come back a year later.

Chairman Maier – Could the applicant withdraw his application?

Mr. Hou – Any applicant, under any circumstance, can always do that. If you don't grant the rehearing/reconsideration tonight than the applicant would have to wait a year before they can come back for the same request. Obviously, if you do grant the reconsideration we are basically resetting the clock in terms of it has to go back to the Ontario County Planning Board and then you actually have to have a proper public notice and public hearing to rule on the merits. A lot of that hearing would obviously involve much of the same discussion you are having tonight.

Mr. Harter – Could the applicant also table where he is right now and potentially come back with addition information and continue this discussion with us?

Mr. Hou – That's certainly your discretion to allow him to do that or he can just withdraw and come back with new information.

Chairman Maier – Based on what you heard tonight, how would you like the Board to proceed? I'll give you that opportunity.

Mr. Filer – I think my most advantageous, beneficial course of action would be to withdraw and try to find a standard of information that will please the Board without having to wait a year if you all allow me that option then I will withdraw, and go away, and not darken your doorstep until I do a better job.

Chairman Maier – That’s fine. Again, I think there have been several suggestions or comments.

Mr. Filer – I will pursue them diligently.

Mr. Harter – it has been an interesting debate.

Mr. Filer – Thank you for your time gentlemen and ladies.

Sue Stehling said that she and Katie Coyne would be the liaisons for the Historic Advisory Committee. They would be present when something historic comes before the Board. A few months ago an historic building was demolished and they would not like that to happen again. It was decided that the liaison process would be the best way to go and that they would like to work with the Zoning Board of Appeals. Ms. Stehling said the best course of action would be to let Babette Huber know what was on the agenda because she would know if the property in question had an historic building on it or not. Chairman Maier verified that the Historic Advisory Committee liaisons were getting an agenda and welcomed Ms. Stehling and thanked her for coming.

On a motion by Keith Maier, seconded by Scott Harter, RESOLVED and unanimously agreed, that the meeting was adjourned at 7:50 PM.

Debby Trillaud, Secretary