

A regular meeting of the Town of Victor Zoning Board of Appeals was held on March 21, 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; Gary Pooler; Debby Trillaud, Secretary

The meeting was opened and the Flag was saluted.

CODE ENFORCEMENT QUESTIONS

Mr. Harter – I'd like to mention something to Al. On High Street where the mold business was operating; when they reconstructed High Street and they relocated the power poles, they widened the road so they relocated the poles, it was one of the first things they did. Then they came through and cut out the old poles and hooked up the new poles. There is a portion of the old pole that they didn't remove that has got a wire going right through it and it's kind of hanging there over the road. It's been there since they finished the project. It's one of those things where it's not going to fall off and land on a car tomorrow but sometime down the line it eventually will. I wanted to bring that to your attention.

Mr. Nearpass – Is that High Street? I know exactly where you are talking about. I see it all the time. It's on the left hand side as you are going towards the Mall.

Mr. Harter – Yes. It's just hanging up there; I'm wondering when it is going to fall.

Mr. Nearpass – If I recall, I think it's actually still being used.

Mr. Harter – It has a wire going through it.

Mr. Nearpass – It's like a cable. I think it's still cabled.... I have to go back and look at it. I don't think it's just dangling there. I think it has some kind of low cost dual purpose or dual use.

Mr. Harter – Yes, I think it does have a wire going through it with some type of purpose, but normally they remove the old poles and they don't leave.... Depending on the contractor I guess.

Mr. Benedict – Do you want me to cut it down or just find out why it's there?

Mr. Harter – Maybe there is a reason for it and I haven't figured it out but I drive by and look at it and shake my head. Maybe next meeting you can tell me what it means.

Mr. Benedict – OK, I'll see what I can find out.

APPROVAL OF MINUTES

On a motion by Keith Maier, seconded by Donna Morley,

RESOLVED that the minutes of March 7, 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

PUBLIC HEARING**POOLER PARK, LLC (Sprinkler Waiver)**

749 Phillips Road
Appl. No. 1-Z-16

Applicant is requesting a sprinkler waiver for an approximately 1,500 square foot addition to an existing 6,800 square foot building. The addition is required to have a sprinkler system per Section 83-4F(2)(a) of the Town of Victor Code which states that all structures shall be required to have an approved fire sprinkler system installed and operational. Section 83-4F(2)(d) states the Zoning Board of Appeals can grant a waiver.

The secretary read the legal notice as it was published in The Daily Messenger on March 11, 2016.

Chairman Maier – Good evening Mr. Pooler, you have the floor.

Mr. Gary Pooler, President of Pooler Enterprises, addressed the Board.

Mr. Pooler – Good evening. We have our business over on Wangum Road and I own this commercial building on Phillips Road that I rent out. We came in and asked for an application for the 1,500 square foot addition and through the process got a letter from Alan Benedict stating that it is over 10% of the area of the old building which is 6,800 square feet. So through that process I have to ask for a variance or I have to put sprinklers in.

What I have is an existing building with a tenant in there, Mike Moreland Lawn and Landscape. He's got outside storage there now and he would like to get some of that inside. I've got a one inch water line coming into the building here. I don't have anything sufficient for a sprinkler system. In order to get a sprinkler system for this addition back here I would have to run a new four inch line all the way from the road, across the blacktop, into the back of the building and into this new area for the sprinkler system. We don't intend to put water in the

addition; it's really for cold storage. We are going to insulate it and heat it with a small heater, but our intent is not to really have heated space at this time.

The hardship is the water line coming into the building will cost about \$22,000. The addition itself is just over \$100,000. It just doesn't seem appropriate that we need to spend that kind of money in an area where I don't need water other than for fire suppression.

Ms. Morley – What is going to be stored in that new addition?

Mr. Pooler – Mowers, grass seed, hand tools...

Mr. Nearpass – Fertilizer?

Mr. Pooler – There is some fertilizer that is in there. The Fire Marshall came through last year, yes, there is some fertilizer in there. We went over everything with the Code and everything was good; in the right containers and everything was adequate.

Mr. Harter – Is there a hydrant nearby Gary?

Mr. Pooler – Yes there is.

Mr. Harter – Where would that be located, is it right out front?

Mr. Pooler – Yes, it's right out front. *Mr. Pooler showed the location on the plan.*

Mr. Reinhardt – Are you planning on fire extinguishers in the new addition?

Mr. Pooler – Yes, absolutely. I do have a letter from the Fishers Fire Department stating that they are in favor of the waiver.

Mr. Reinhardt – Can you give us a general overview of what your business is so we can balance it out ... I understand that the cost to put the sprinkler system in is going to be \$24 - \$26,000.

Mr. Pooler - \$22,500.

Mr. Reinhardt – What I'm trying to compare it to is if you were for example selling ice-cream and trying to recoup \$26,000, that's a lot of ice-cream, but if you are a much bigger business and you are selling widgets and you are selling hundreds of thousands of dollars of widgets, it's easy to recoup. Put on the record why it is a financial hardship, not just to the cost, but what kind of business you run.

Mr. Pooler – I bought these buildings mainly for my outside construction storage. Merrill Contractor's equipment was in the yard. They just keep telephone poles and trucks and do all kinds of things outside. When I bought the yard we ended up getting the building with it. In order to justify buying it what I had to do was rent the building out. I had to go in and make improvements in the building, fix it up. It really comes down to cost per square foot, what people will pay. If I have to go to the cost to put the sprinklers in, the tenant will not pay the extra for

the addition. If we can't get the cost in line, people just can't pay. What I'm finding out, I'm approved for a new building on the site, but when you talk to people in square footage and what they are renting, anything over \$9 or \$10 a square foot just gets outlandish. What I try and do is keep things in the \$5, \$6, \$7 a square foot and I'm able to keep it busy and full.

Mr. Reinhardt – The tenant you are leasing to, are there going to be restrictions on what kind of activities will go on inside this structure? It sounds like it is for cold storage, but if there was going to be welding for example, that may heighten the danger and put more of a need for sprinklers. Will you have restrictions on your tenants not to conduct certain kinds of dangerous activities?

Mr. Pooler – I could, but it comes down to a matter of power. The existing building now has three phase electrical outlets for welders in this corner. If there is any welding going on, it would be going on in this building. I certainly could put a restriction over here. This tenant wouldn't have any problem, but let's be honest, in the future, if he leaves, somebody comes in and they want to do something in there..... I guess I would just have to leave the restriction on.

Mr. Reinhardt – What's important to the Board is your presentation; if a certain kind of activity is going to go on and therefore minimize the need for sprinklers. Certainly you can rent to whomever you want but if the tenant changes then it is a different kind of activity where it may need sprinklers. That's a different issue for the Board.

Mr. Pooler – I'd be happy to put a restriction on that there will be no welding if that makes you happy.

Mr. Reinhardt – I can't speak for the entire Board. It's a concern that I have. I'd like to hear what the rest of the Board has to say.

Mr. Nearpass – Is there an existing sprinkler system in the existing building?

Mr. Pooler – No, there is no sprinkler system. We only have a one inch water service. There is a new building. You can see the new building on the lower part of the plan; that's a new building we put up a few years ago and that is totally sprinkled.

Mr. Nearpass – So the previous building was preexisting nonconforming?

Mr. Benedict – Correct.

Mr. Nearpass – I think in similar situations, that we've supported, the applicant ensured that there was plenty of additional fire safety equipment. If the only issue is saving cost, my personal opinion is that the bar is a little higher than that. Along the lines with what Mike said, if the trade is that there will be certain activities that you might not allow in that section of the building, I would be in favor of that. If someone came to you down the road and said they really wanted that part of the building to be a welding shop, then you would certainly have the opportunity to come back in front of us or put a sprinkler system in as a result of that. That would be a good trade in

this regard if I had to balance the needs of public safety. I think what you are requesting is fairly reasonable.

Chairman Maier – You indicated that it was \$22,000 to run a four inch water line to the new addition. Do you have an estimate written up for that?

Mr. Pooler – I do, but I did not bring it, I'm sorry. I just had one of my estimators put an estimate together. I have it at work but I didn't bring it.

Chairman Maier – Do you remember what was in it for the record? Can you give us a review on how that \$22,000 was arrived at?

Mr. Pooler – Permit fee; Town approvals; doing the tap on the road; milling the blacktop out; coming across the existing blacktop; digging this all the way up through the building. I've got a fuel island right here with a 4,000 gallon tank in there, so I have to be very careful coming through the back of the building, digging up along that tank. It's right on the back of this building here, right in the center. We would have to dig up through there, come into the building, do the inside service, get it set up with meter, the whole process.

Chairman Maier – But you do have an estimate?

Mr. Pooler – Yes.

Chairman Maier – OK. We have heard from the Fishers Fire Department but not from the Victor Fire Department. We have also heard from the Town of Victor Fire Marshall.

Mr. Reinhardt – I'd like to ask Al, in your mind are there certain activities that would heighten your concern to say that you are getting to a point where sprinklers should be put in? I'm sensing that the kind of activities that are being proposed and how the tenant is going to use the facility, it appears that the concern is relatively minor, the risk is low, so the need for a sprinkler system isn't there. But, with all the activities that could go on in that type of structure, I'm wondering if there is ever that bar, that x factor, that says we should have sprinklers in there? I just used welding as an example, I don't know what that factor is and I would defer to you as to what you think.

Mr. Benedict – The Building Code does address certain levels. It takes into consideration the size of the building, the activity that is going on it in, the amount of material. For example if there is fertilizer it takes into account how much of that material is in the building and how much is allowed to be stored in the building. Once you go beyond those limits, it then does determine what kind of system you need in the building. I have been in the building. It is more of a shop type atmosphere. They are doing welding. There are requirements; there is supposed to be someone there for a fire watch when somebody is doing that. In my opinion, additional fire extinguishers available would be beneficial. That's just my opinion. Certainly, the Fire Marshall goes in there every two or three years and reviews what's going on in the building. If the use changed, he could say something about it and if they needed to come back and address it with a sprinkler system they could do that.

Mr. Reinhardt – It sounds like there is a safety net. If something would occur, a new tenant goes in or different activities go on in that facility, we could rely on the Fire Marshall saying that there is getting to be a situation where maybe sprinklers should be installed.

Mr. Benedict – Correct.

Mr. Reinhardt – I'm comfortable with that.

Mr. Nearpass – I was a little surprised that the Fire Marshall and the Fire Chief came back and basically said it was OK. In the past they seemed a little stricter than that. Especially with an applicant that says we're going to have fertilizer and store lawn mowers that I'm assuming are going to have gasoline in them; we're welding. It seemed to me the perfect opportunity for the Fire Marshall to say, if anything should have a sprinkler system, it would be this building because they are going to put all this...

Mr. Pooler – In all honesty, they don't do a lot of welding or a lot of torch work. In a normal repair facility, welding shop, you'll have a lot of that, but what they are doing on the lawn mowers.... They don't do much welding on them, they get rid of them.

Mr. Nearpass – Not saying welding, just storing them. Other cases that we've had in front of us, applicants, generally it's a barn type structure where they are going to store non-flammables and they get a waiver. It's not going to affect what I said tonight, but I was a little surprised that the Fire Marshall, knowing what is going to be in there, ... If we said there was going to be dynamite stored in the building, I'm sure they would have come back and said maybe we want a sprinkler system. I couldn't think of another perfect storm for the Fire Marshall to say there is going to be gas, motor vehicles, fertilizer, and welding.

Mr. Reinhardt – I thought the analysis, when we dealt with this before, is that the Fire Marshall was concerned that the sprinkler system would be able to mitigate or contain the fire.... The sprinkler system isn't going to necessarily put the fire out, it's going to keep it contained long enough until the Fire Department gets there to extinguish the fire. Is that your understanding Al?

Mr. Benedict – Correct.

Chairman Maier – Sprinkler systems also are designed to let people exit the building. The Halon systems are for suppression and extinguishing.

Mr. Benedict – Correct.

Mr. Nearpass –I was just trying to figure out under what circumstances the Fire Marshall would say that you absolutely need that sprinkler system.

Mr. Benedict – You would say you absolutely need it when any of those things reach a certain threshold by the Code. In the Building Code it says you are allowed to store this much of this

material. And there may actually be provisions of you can only store this much if you have this type of this material.

Mr. Nearpass – OK, so it is quantifiable and it is defined and the applicant is adhering to the Code in that regard.

Mr. Pooler – Actually I think the Fire Marshall comes through every year, it may be every other year, but it seems like he's through there... We've never had any problems. If he needs something done we take care of it. I think he's pretty comfortable with us.

Mr. Harter – So there is a kind of safety valve, so to speak, in that the Fire Marshall makes an inspection every other year.

Mr. Benedict – That's correct.

Mr. Harter – In the absence of having the Fire Marshall and Fire Chief here, I don't know that I could speculate a lot more than I already have.

Chairman Maier – Al, to follow up on your comment about the fire extinguishers, in this situation would you have a recommendation?

Mr. Benedict – The Code requires a fire extinguisher anywhere within 75 feet of where you are standing. If he felt a little uncomfortable, he could always ask for an additional one or two. What are the dimensions of the building, Gary?

Mr. Pooler – 28 feet by 51 feet.

Mr. Benedict – So probably even the existing fire extinguisher would still cover it.

Mr. Pooler – We'll put another one or two in there, we don't have a problem with that.

Chairman Maier mentioned that the Town of Victor was also heard from. The Lehigh Trail is within 500 feet of the application address and the Town has come back with a lack of comment.

Chairman Maier opened the discussion up to the public and there was no one to comment. He then read the resolution.

RESOLUTION

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on March 7, 2016 from Pooler Park LLC, 783 County Road 42, Victor, NY, 14564 requesting a waiver to the Town of Victor Sprinkler Code Chapter 83-4F (2) (a) to allow the construction of a 1,500 square foot addition to an existing 6,800 square foot building at 749 Phillips Road, Victor, NY 14564; and,

WHEREAS, said application was referred by Alan Benedict, Town of Victor Code Enforcement Officer, on the basis that all structures are required to have an approved fire sprinkler system installed and operational. The addition is greater than 1,000 square feet and thus does not meet the exemptions of the sprinkler code; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on March 11, 2016, and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, Robert Graham, Town of Victor Fire Marshall, commented on March 14, 2016 that the request seemed reasonable and would support the Fire Department's comments; and,

WHEREAS, Andy Stromfeld, Fishers Fire Department Chief, commented on March 14, 2016 that the Fishers Fire Department is in favor of the sprinkler waiver involving the addition at Pooler Park; and,

WHEREAS, a Public Hearing was held on March 21, 2016 at which time no one spoke for or against the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals considered the following:

1. Undue economic hardship.

Justification: It was indicated that the cost of the sprinkler system is an additional \$22,000 which is approximately 20% of the cost of the addition. The owner is forced to pass the cost on to the tenant which then would make it cost prohibitive to the tenant to rent the building. It represents a substantial expense which would need to be passed on to the tenant and cause economic hardship.

2. Physical or legal impossibility.

Justification: This consideration cannot be satisfied. The installation of the sprinkler system is made physically more difficult because an adequate water conduit is not already in place.

3. Impediment to the intended objectives of this section.

Justification: The purpose of the addition is cold storage; no one will live in the addition. The purpose of the sprinkler system is to save lives and assist the fire department, giving them time to arrive at the scene. Installing a sprinkler system isn't going to assist the fire department in mitigating the potential fire.

- 4. Necessity in light of other viable alternatives which meet the objectives of the code section.

Justification: There is a hydrant in front, and the addition will have extinguishers within the Building guidelines.

- 5. Recommendations and comments submitted by Andy Stromfeld, Fire Chief of the Fishers Fire District and Robert Graham, Town of Victor Fire Marshal indicate that they are in favor of waiving the installation of the sprinkler system.

DECISION:

On motion made by Keith Maier, and seconded by Scott Harter:

NOW, THEREFORE BE IT RESOLVED that the application of Pooler Park LLC, 749 Phillips Road, Victor, New York, for a waiver to the Town of Victor Code to allow A 1,500 square foot addition to an existing 6,800 square foot building to be constructed without a sprinkler system BE APPROVED.

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

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

Adopted: 5 Ayes, 0 Nays

Mr. Pooler – Thank you very much.

On a motion by Michael Reinhardt, seconded by Mathew Nearpass, RESOLVED and unanimously agreed, that the meeting was adjourned at 7:30 PM.

Debby Trillaud, Secretary