

A regular meeting of the Town of Victor Zoning Board of Appeals was held on June 6, 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; Michael Reinhardt; Mathew Nearpass; Donna Morley

ABSENT: Scott Harter, Vice-Chairman;

OTHERS: Al Benedict, Code Enforcement Officer; Dave Tantillo, Town Board Liaison; Mike Guinan, Town Board Councilman; Babette Huber, Town Historian; Rob Christie; Gary Pooler; Jonathan Friedlander; James Brownsword; Bill Smith; Debby Trillaud, Secretary

The meeting was opened and the Flag was saluted.

### **APPROVAL OF MINUTES**

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

RESOLVED that the minutes of April 18, 2016 be approved as submitted:

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

Approved: 4 Ayes, 0 Nays

### **PUBLIC HEARING**

ZOETEK – SIGN (Area Variance )  
668 Phillips Road  
Appl. No. 6-Z-16

Applicant is requesting to add additional panels and enlarge their existing monument sign to accommodate the sign panels of tenants that will be leasing space in the building, whereas, Code Section 165-5B(1) states that freestanding signs should identify buildings or plazas and not individual businesses and that the sign is not to exceed 20 square feet in total area.

The County considers this a Class 2 action. They have recommended disapproval and therefore a super majority is needed to approve the variance.

The secretary read the legal notice as it was published in The Daily Messenger on May 29, 2016.

Rob Christie, President and owner of Zoetek Medical addressed the Board.

Mr. Christie – Good evening, thanks for letting me speak tonight. I bought the business about a year and a half ago. We had a tenant at the time I purchased the business, Equitec. They have since moved out to East Rochester and the space in our basement is about 3,800 square feet and has been available for lease. We've had a new tenant move in, De Brine Chiropractic. She has moved from Monroe County into Victor, bringing business into our community and she needs some more advertisement. The sign that we have out front has just been advertising Zoetek as you can see by the image here. What we are proposing to do is just add two signs directly below; raise the height of that Zoetek sign so that we can provide a little bit more advertising for her business. Janiuary Group is my LLC that I used to purchase the business at the time. That's just a place holder for a second tenant that we'd anticipate taking up that space in the basement.

As I looked through the five factors that you consider in considering my appeal, the first one was the undesirable change that would be produced in the character of the neighborhood by introducing this sign change. What I am proposing is stylistically very similar to the current state. It would be similar lettering, same colors. Stylistically we wouldn't be introducing much of a change to the current state and it's a modest change to the height. In terms of total area, we'd be going from 16 square feet to 27 square feet. What we are also saying, a second factor, whether we could achieve that through some other means, Doctor De Brine has intentions of putting a sign on the side of the building, but the access to this basement space is from the back of our building. Posting signs out front on the side, means that coming northbound up Phillips Road that side is not visible from the road and so it limits visibility for traffic going northbound. It's a little bit set far back and so even if you are coming southbound on Phillips Road it's difficult to see that sign, particularly with the size restrictions according to Code. We do have alternatives, but they are not as effective as having that sign out front being able to advertise her business.

The fourth factor, an adverse effect on the physical or environmental conditions in the neighborhood; this sign is set far back enough from the road that it doesn't create a blind spot, so even as we increase the size of the sign, we don't expect that we would have any adverse impact on the visibility of traffic, blind spots coming in and out of the parking lot. Finally, the fifth factor, this is wholly self-created. I'm a business man and I'm trying to generate some additional revenue by leasing out our basement space so I come to you asking for this variance just so that we can make that additional space as appealing as possible to the continued lease that Doctor De Brine would be seeking. As well, as I mentioned earlier, it's bringing more business to Victor. She's relocated from Monroe County, in Greece, and has come to Victor. I'd like to be able to help her build her practice by providing her some more advertising for her business.

Ms. Morley – This sign, the Janiuary Group, LLC, now that is the same business as Zoetek?

Mr. Christie – It's a separate business. I'm the sole member of that LLC. That sign, placard, in the mockup is just a placeholder. We're expecting that we will be able to release the other space in that business office to a new tenant.

Ms. Morley – So you are just putting that in, OK.

Mr. Christie – I'd just like to have a placeholder for whoever that new tenant will be.

Mr. Reinhardt – Are other signs in that area that are identifying businesses?

Mr. Christie – Correct.

Mr. Reinhardt – They are? (Yes) There are other signs in the area that identify businesses?

Mr. Christie – Yes there are. There is a Swift business that does Toyota forklift service along that same passage.

Chairman Maier – Signs that list individual tenants, I think that's what you are asking, Mike?

Mr. Reinhardt – Right, the Code by design is just supposed to identify a building, a number, and not... I think the intent of the Code is so that up and down the roads there aren't numerous businesses being named. Instead of just the sign identifying the building itself with an address.

Mr. Christie – By that criteria, there are other signs that are monument signs that are advertising businesses, but not multiple businesses.

Mr. Reinhardt – The alternative for your new tenant is to put a sign at the rear of the building?

Mr. Christie – Yes, you could put a sign at the side of the building, but as I mentioned earlier coming northbound on Phillips, that side of the building is not very visible, if at all. Especially with the entrance to our parking lot. As you come up to the entrance of the parking lot, the wall is actually right here, so you are not going to be able to see that sign.

Mr. Reinhardt – Just from your presentation, my concern is that you are really trying to circumvent the Code here. The Code by design is just for the monuments to have the name of the building and not for advertising the name of a business and that's exactly what you are doing. The size of it, it's 27.9 to 20, it's not that much different, but the intent of what you are describing, and I'd like to hear from the rest of the Board, I'm not entirely confident with it right now.

Mr. Christie – When I say advertising it's really as she is bringing her patient load from her former practice in Greece over to Ontario County, to just be able to locate her business and her practice. That's really what I mean with advertising. Yes, there is some advertising effect just by the fact of having the sign out front.

Mr. Reinhardt – We've had multiple sign issues, especially the farther towards the Mall that you go, the greater it appears the need to be. From time to time, for me, what I hear, the advertising piece is either one of two things. It's either we're looking for the drive-by customer. I don't think this is what is happening here. It sounds like you are looking or she's looking for helping clients find her. I don't see why it can't be with the address of 680. Identifying the building, they should be able to find it. As I sit right now, I'm not entirely comfortable with the justification for the purpose of this sign.

Mr. Christie – That's a fair point.

Mr. Nearpass – I agree with Mike. We certainly also had other cases in the area. I can understand as a business owner you want to get your name out there, you want to use that to distinguish your location, but generally what is allowed per Code is to establish the building as a landmark so to speak. So the Zoetek office park, the Zoetek office building or something to that effect.

I can't remember the name of the businesses, but there have been two recently where they had subtenants and they wanted to do the exact same thing. Instead they ended up working with the owner of the building demarcating the building as a name, for example the Zoetek office park. That's where anyone who is a subtenant of you would say we are in the Zoetek office park, 680 Phillips Road, instead of trying to put those individual businesses on a sign. The Code, when it changed, some nine or ten years ago, made it very clear that that's not what they wanted to have. They wanted rows of business having monument signs establishing the buildings themselves as an entity or landmark and then drawing people to that location. Just using it, to Mike's point, not for advertising, but for, in my advertising, how do I tell somebody where I am? Either an address or again, Cedarwood office Park Suite 300, something like that is the intent of the Code.

Have you thought about that, what the monument sign might look like and what you might call it.

Mr. Christie – That would be plan number two that we would go to.

Chairman Maier – So you have a current tenant, is that correct? (Yes) How much of their business is drive-by or walk-in? Do you happen to know?

Mr. Christie – It's a chiropractor, so I would imagine that they would be calling for an appointment and she would typically be driving most of her advertisement through web or referral.

Chairman Maier – So when she gives the address out, the address she gives is what?

Mr. Christie – She'd give out 668 A Phillips Road. The confusion that we've had to date has just been people coming in to our office space, the Zoetek medical office space rather than thinking to go to the rear of the building. From that perspective, putting the sign up on the side of the building should relieve some of that confusion.

Chairman Maier – I think it would too. I did not have a hard time, partly because of the name, it's a very unique name, it's very easy to recognize. The sign that you have there is very easy to recognize, so I have had no trouble recognizing it. Have you gotten a response from the Code Enforcement Officer?

Mr. Christie – Yes, I did.

Chairman Maier – So you have read through those? (Yes, I have) Have you gotten a response from Ontario County?

Mr. Christie – Yes, I do, They recommended to turn it down.

Chairman Maier – Yes, they recommended against the sign.

Mr. Reinhardt – Another aspect I'd like to put into the record is that when a new client or patient is looking for the doctor. I've had that before, my primary doctor has told me to go to different specialists; you make the contact, almost as a knee jerk reaction they send you the letter, here is where we are located and there is a map with an arrow and an "x" and there is all kinds of information so that that new patient can find the new doctor. The connection is being made. This point, to me, is relevant because it's that alternative means which you are looking for to do for those patients that can be done by simply sending out a map that says go to the rear of the building.

Chairman Maier read the comments from the Ontario County Planning Board:

The County Planning Board has long taken an interest in supporting local efforts to limit excessive signage. The intent is to protect the character of development along county corridors by encouraging local Boards to adhere to their adopted laws as much as possible. All applications for signs located on property adjoining primary travel corridors that do not comply with local limits on size and/or number. This is a final classification, Class 2, findings as I mentioned, the proposed sign is on land along the 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 countywide importance. Local legislators have standards for signage that allows for business identification sufficient to safely direct customers onto a specified site. It is the position of this Board that the proposed signage is excessive. Excessive signage has a negative impact on community character and their final recommendation is denial.

Chairman Maier opened the hearing up to the public. No one spoke and the Chairman closed the public hearing and asked the Board how they felt about the proposed sign.

Mr. Reinhardt – My position hasn't changed. I don't agree with it, I agree with the County Planning Board's thoughts. There are other ways to solve the problem.

Ms. Morley and Mr. Nearpass agreed.

Mr. Nearpass – I think the applicant's options are keep it exactly the way it is now. There was a question regarding the lighting in it. I'm assuming he's allowed to keep the sign as is, previously existing, non-conforming, or if he wanted to change it, if he was going to call it the Zoetek Medical Complex, he would also have to bring the lighting into Code.

Mr. Benedict – That is correct.

Mr. Nearpass – That is something you would work with him on, if he decides to do that or would you still try to seek a variance for the lighting?

Mr. Christie – At this point I will go back and confer with my tenant and just see where we end up. If, through the learning curve, her clientele is accelerating quick enough, we can just leave it as is.

Chairman Maier read the resolution.

## **RESOLUTION**

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on May 12, 2016 from Robert Christie, President, Zoetek Medical Sales & Service, Inc., 668 Phillips Road, Victor, NY 14564, requesting an area variance to add additional panels and enlarge their existing monument sign to accommodate the sign panels of tenants that will be leasing space in the building, whereas, Code Section 165-5B(1) states that freestanding signs should identify buildings or plazas and not individual businesses and that the sign is not to exceed 20 square feet in total area; and,

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on May 29, 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 May 25, 2016 and returned it to the local board with a final recommendation of disapproval; and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act and therefore does not require further action; and,

WHEREAS, a Public Hearing was held on June 6, 2016 at which time no resident spoke for or against the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for adding additional panels and enlarging the existing Zoetek monument sign located at 668 Phillips Road, Victor, NY 14564:

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: The proposed sign does not follow Code and is not consistent with the signs in the neighborhood. The Ontario County Planning Board has the position that excess signage has a negative impact on the community.

- 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 applicant can maintain the existing sign which is very clear from the roadway from both north and south and can also place a placard or sign at the location of the existing business to help customers find the other businesses in the building. There are other means that can be used to help direct their clients or patients to the building. (i.e. email; written notice; verbal directions when making appointment).

- 3. The requested area variance is substantial.

Justification: The fact that it is unique; Ontario County did not approve of it, it does not follow Code and the purpose of the sign can be achieved by other methods.

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

Justification: The adverse effect is as defined by the Town of Victor Code and also by the comments made by the Ontario County Planning Board.

- 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.

**DECISION:**

On motion made by Keith Maier, and seconded by Michael Reinhardt:

NOW, THEREFORE BE IT RESOLVED that the application of Robert Christie, President, Zoetek Medical Sales & Service, 668 Phillips Road, Victor, NY 14564, requesting an area variance to enlarge an existing monument sign by adding two panel signs to accommodate the business sign panels of tenants that will be leasing space in the building BE DENIED:

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

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

Adopted: 4 Ayes, 0 Nays

POOLER PARK, LLC – 7575 HANNAN PKWY (Area Variances)  
7575 Hannan Parkway  
Appl. No. 9-Z-16

Applicant is requesting to have a motor vehicle repair facility 680 feet from the boundary of a residential district, whereas §211-24A(9)(b) states that a motor vehicle repair facility shall be at least 1,000 feet from any residentially zoned district. The applicant also requests to allow a crushed stone access road, whereas §211-24A(9)(d) states that all access roads must be paved.

The secretary read the legal notice as it was published in The Daily Messenger on May 29, 2016 and the Chairman opened the public hearing.

Mr. Gary Pooler, President of Pooler Enterprises and Pooler Park LLC addressed the Board.

Mr. Pooler – Good evening. If I can just give you a little history on what's transpired here. On or about April 6, 2016, I bought the old Victor Excavating building on Hannan Parkway. The day I bought it I came to Town Hall and approached Al, I have a tenant going in there that needs a security fence for a towing company. I asked for a permit to put it up and that's when I had my setback. Al said I'm in a change of use, we're having a little disagreement over that, so I'll just go along. I have a lease signed for June 1<sup>st</sup> and I can't meet that obligation and I'm a little nervous. Going through the Planning Board, I submitted the plans for the security fence on the property. I went to the Conservation Board, they asked me to get a letter from the tenant on spills, which I have received.

There are a couple of Town easements across my lot for lots one and two. I own lot three. We've realigned the security fence a little bit to have both gates, they happen to open up right over the drainage easement. If there is ever a problem, we can open the gates and dig through and there won't be an issue with the fence. It's my responsibility regardless.

The Planning Board has asked me to request two variances. One is that we are 680 feet from a residential property line. We are actually 1,340 or 1,350 feet from a building structure that is residential. We're on the top of a hill and there are trees between us. There is no visible line of sight from the residential lot.

I received easement letters from both tenants. Lot one, Danny Brie, and Lot two, a couple of cabinet makers, I can't remember their names right now. I've turned them into the Town, Cathy has them. I believe you got everything, but the Planning Board recommended favorably.

Hannan Parkway is about 800 feet long and it is millings and stone. The Codes office considered that that is dust free. With that I don't quite see the issue if I am driving 800 feet on millings, I have millings going into my parking lot, why I need to just pave the entranceways from Hannan Parkway just into our lot. It's the same material, same product. I brought pictures if you didn't get them from the Planning Board.

At the Planning Board meeting Mr. Logan spoke up and said they just gave an approval to Horsepower Motorworks, which is actually closer to the same residential building as I am in line with. Chairman Dianetti recommended a positive recommendation, Mr. Gallina agreed.

I understand why the building sat there vacant for so long. I had a hard time convincing my attorney that I should buy this property because of the association agreement for the maintenance of the road and stuff going in there. I'm pretty familiar with all the players in there.

I'm very comfortable and I had to convince my attorney to buy this and now I'm worried about reselling again after I go through this. It's been there since 1986/1987 roughly 28 or 29 years the road has been there. It's had millings on it since '92 or '94, the best I can tell. The time the building has been sitting vacant with nothing going on there, I think the Town would be happy to have somebody come in, fix the place up and get it back on the tax rolls. I guess this is self-created because I bought the place, knowing what I had here. I didn't realize it was a change of use. I personally believe that an auto repair facility or a towing company with cars in there would be an upgrade from construction equipment repairs; garbage trucks, there were about five garbage companies. The same company got sold five times. I bought it from Rolling Iron which was a compactor. They compacted garbage and cardboard and plastics. They worked on the compactor ever since I worked on cars, pickups, all the stuff we're going to do in there. I brought some maps of the distance. I don't know if you can see the apartments that are in question with the 680 feet.

Chairman Maier – Is that the residential area? (Yes) So it's a large parcel. (Yes) That the apartment complex encompasses. (Yes)

Mr. Pooler – As I have said, there are trees behind us. Let me grab some of the photos.

Mr. Benedict – Actually the 680 feet is to the residential property. It's zoned residentially.

Mr. Pooler – It's not to the building, it's to the property line. (Right) There is actually another commercial-light industrial lot between me and the residential lot.

Mr. Benedict – Right, and that lot is vacant.

Chairman Maier – The access to that lot is alongside here, Al?

Mr. Benedict – The access to that lot would be from State Route 251.

Mr. Pooler – There is no access from Phillips Road or Hannan Parkway. (showing a map) This is looking south from my building, this is the hill. I own right up into these trees and there is another lot in here that is light industrial. The residential is over that hill.

Chairman Maier – Ok, and then there is the bald area. Is that part of that industrial zoned? I don't think you can see it from here, but it's in-between the trees and the apartment complex and your property.

Mr. Pooler – That's on the residential.

Chairman Maier – OK, that is residential.

Mr. Pooler – But it is on the other side of these trees that I was just showing you. It would be on the back side of these trees over here, over the crest of the hill. (showing plan)

Chairman Maier – Before we start, I have a question. I think there was some discussion over the millings and that the millings would be acceptable in terms of a pavement for dust control. Is that..?

Mr. Benedict – In my opinion that's acceptable, yes, from what I've seen in the field.

Chairman Maier – Does the Town have criteria for millings? We have design criteria for road base. Do we have any kind of criteria for millings?

Mr. Benedict – I don't think so.

Mr. Pooler – I couldn't find any.

Chairman Maier – The question I have is that if the millings are acceptable, and I think they proposed putting millings down, do we need to grant a variance, because dust control won't be an issue?

Mr. Pooler – It's been here for 27 years and there has never been a dust issue here to this point.

Mr. Benedict – There are two issues here. One the Code says you have to pave the access way. To me, Hannan Parkway is totally dirt or crushed stone or old millings. There isn't another site in there that has any paving. It wouldn't make any sense, not that I'm trying to sway you, to pave a small area and then switch to millings. From what I've seen in the field, millings, you put them down, they get heated up, they are rolled over, they tend to run together. That's not a smooth paved surface but it seem to do the job as far as keeping dust down.

Mr. Pooler – In my facility in Wangum Road I put a foot of millings in and we don't have any problems.

Chairman Maier – I'm just trying to figure out from a procedural aspect, it seemed like the Planning Board, if I read the notes correctly, was fine with the millings. If the millings were acceptable, that would be a dust free surface.

Mr. Benedict – Like I said, there are two aspects. Paving access way, and if you are providing an area that is dust free, dust is not generated, I think you are all set from that standpoint. It's the paving of the access point, is the variance, if I remember.

Chairman Maier – That's OK, the access point off of Phillips Road is paved.

Mr. Benedict – Correct.

Chairman Maier – I think there is 20 or 40 feet that is paved and then it goes to gravel. It's a little bit of everything.

Mr. Pooler – Actually, it's all millings. Mr. Pooler, pointing at plan, this is Phillips Road and it's all millings right up here. It looks like blacktop because it's been down forever and it's been beaten in and rolled. Danny's got equipment right here and he comes up grades it and rolls it.

Chairman Maier – So we do need to do two variances tonight.

Mr. Benedict – One variance is for the 1000 foot buffer and the other one is the paving of the access points.

Mr. Nearpass – So there is no use variance required? (No)

Mr. Pooler – This picture is Danny's property, he is lot 4, you can see the millings coming in and they go straight across.

Ms. Morley did not have any questions.

Mr. Reinhardt – Can you tell me a little more about this motor vehicle repair facility? Is it commercial, private, is it for your equipment? What is it?

Mr. Pooler – It's MTM Automotive, formerly Any Time Towing. Max bought out Any Time Towing. They've been down on Route 251 and I've got them on Phillips Road, on 749 Phillips Road. They are just on the other side of the road. I have two tenants in there and they both want the whole building. This building came up for sale and this is just the perfect location for the towing operation. It's far enough off the road; it fits right in with everything else in the neighborhood. I've got pictures off the computer for years. My property is right over here and I've got the same thing over there.

Mr. Nearpass – You're on the east?

Mr. Pooler – I'm to the north of it.

Mr. Reinhardt – I'm curious about the conversation you had with your attorney. It's fair to say he was discouraging you from buying the property.

Mr. Pooler – He tried everything to discourage me, yes.

Mr. Reinhardt – Did it have anything to do with the Code? The language of the Code?

Mr. Pooler – No, not really. It was just the maintenance agreement and just having other people that you have to answer to and have to come up to an agreement. When I first got Al's letter, I went to both owners and I said they may make us pave the road. Where are we going to go? They said, do whatever you want, we aren't paying for anything. That's what my attorney was talking about. I'm not going to pave the road.

Mr. Reinhardt – Your attorney brought concerns to you regarding the paving of the road?

Mr. Pooler – No, just having more than one owner having a say on maintenance. There is language in the agreement that is pretty clear, but you have to have a consensus and there are three people. Two people against one...

Mr. Reinhardt – Maybe I'll rephrase the question then. When did you first become aware of the problems or Code restrictions on the property?

Mr. Pooler – When I went to see Al after I bought the property.

Mr. Reinhardt – It's after you bought the property, OK.

Mr. Pooler – Never had a dream that there was an issue. I thought I would just go down and get a permit and put a security fence up.

Mr. Nearpass – You want to take down the building?

Mr. Pooler – No, no, we aren't touching the building at all.

Mr. Nearpass – Maybe it's not a building, it's the orange...

Mr. Pooler – That was just an overseas container. It looks like a building. It was probably the best representation. It's from 2015.

Mr. Nearpass – When was the last time there was an operation here, you said it was the 1980s, or the 1990s?

Mr. Pooler – That was when the whole thing started, 1986 or 1987. Jim Northrup bought it from his material pits, gravel pits in Brockport. Then Rick Hannan bought it. Rick put in his shop. This building I'm talking about was Victor Excavating's first shop. I was a mechanic in the shop fixing his equipment when he opened. I worked out of the shop for years. Fred Hoff was the next one who moved in there with his garbage operation. I used to fix Fred's garbage trucks and pickups and cars and everything.

Mr. Nearpass – So the two variances we are looking at here, one for the asphalt driveway ...

Chairman Maier – Not having a paved access point and the 1000 foot buffer from the residential area.

Mr. Nearpass – I was looking at it from Google Earth just to see what was in the area, so there is a company called Horsepower Motorworks right around the corner, it's closer to the residential area. Do they have a variance to operate there?

Mr. Benedict – Correct.

Mr. Nearpass – I think they were in front of us before. (Correct)

Mr. Pooler – I was told that by the Planning Board, I don't know.

Mr. Benedict – That is correct.

Mr. Nearpass – The purpose for the extra entrance is to park vehicles behind it?

Mr. Pooler – Actually, the lot is big enough. He's only taking the front lot so the other entrance would be for the back lot and I don't have plans for that or anything. I wasn't here to talk about that. I'm really here to talk about the front lot and the building access. I need a C of O.

Mr. Nearpass – Today there is an access road? (Right) And you are asking for another one. The other one looks like it has to do with the lot in the back.

Mr. Pooler – It was already approved for the maps with two entrances. I didn't add the entrance, it's already in.

Mr. Nearpass – It's the asphalt entrance and the proximity to the residential property. Are we aware of any complaints from the neighborhood regarding Horsepower Motorworks?

Mr. Benedict – No.

Mr. Nearpass – Al, do you think they're a similar operation, that they are going to be doing similar things to vehicles? Is there anything that the applicant is going to be doing that would be worse? He's almost twice as far away.

Mr. Benedict – The only thing different would be bringing vehicles in potentially later at night, in the middle of the night.

Mr. Pooler – The operation's hours we don't have a problem with. The only issue there would be tow trucks coming in at night just dropping cars off, but there would be no customers.

Mr. Nearpass – In terms of the Code, what would happen in a motor shop, banging, metal work type ....

Mr. Benedict – I wouldn't think it would be anything different.

Mr. Pooler – It might be better.

Mr. Nearpass – That's what I'm trying to understand. Is it a similar operation to a variance that we have already granted to something closer? If we had some data that tells us we've had zero complaints from the neighborhood on that ruling... It's a tricky one, if we have to have him pave it, then he's got to pave the whole thing. He wouldn't just pave his piece of the road.

Mr. Benedict – My interpretation would be paving the portion where it comes off of Hannan Parkway into his area, not Hannan Parkway. That would be my impression.

Mr. Nearpass – From Hannan Parkway to his area. So everything within the security fence.

Mr. Pooler – I thought it was just the entryway coming in there.

Mr. Benedict – There is one Code that says the access point and then there is another Code that says all places where vehicles traverse.

Mr. Nearpass – I thought maybe it was Kitty who did it, or one of the car dealerships, they put that mesh down. Can't remember what it was called but it was off of Route 96 towards Farmington. I thought they had to put a mesh type of surface down in the grass. They just took a field and converted it to store cars there. Are there any other alternatives that you have considered?

Mr. Pooler – There is nothing that is cost effective. I think what Kitty was doing, she had an environmental issue down there she was working with, there was a lot more to it I think.

Mr. Nearpass – What is affordable. What options are out there that are affordable other than not doing anything?

Mr. Pooler – I'm not paving it. I'd have to put the building up for sale and walk away from it. There is no way, no how. It makes no sense to drive 800 feet to a paved lot. It's the same material, the same everything.

Mr. Nearpass – How much would it cost to pave it?

Mr. Pooler – Probably \$200 a linear foot. It's not an option.

Mr. Nearpass – What is that, how much would it cost?

Mr. Pooler – It's 800 feet times 200. \$16,000. Danny doesn't want to pave because he runs his equipment, his dozers back and forth. His storage yard is lot 4 and he works on lot 1 and he runs the dozers right down there and he said if you pave it I'm just going to run my dozers over your blacktop.

Chairman Maier – Lot 4, that's the one in the back? (Yes)

Chairman Maier – Al, this district, we have hours of operation that are from 7:00am to 7:00pm. That's for auto repair facilities. Would you assume that would just be repairs and not any other type of activity?

Mr. Benedict – This is the same business as when they were on Route 251. I believe running a tow truck in the hours beyond 7:00pm was discussed. I don't recall whether a variance was granted. There may have been a variance for that. It was for limited use, I think it was for no mechanical work, just come in, and drop vehicles and go.

Chairman Maier – I know body shops, they have normal hours and then whatever cars get dropped off, when they do that. I just wanted to ask so that we've got a record of it. All vehicles which are awaiting repairs shall be stored inside of the building. So this is a towing business that you are proposing right now?

Mr. Pooler – Yes, it's mainly a towing business. They will pick up accident cars and bring them to the yard, but a lot of them are just waiting for insurance claims or insurance adjusters for a settlement. After that, the owner will direct them to a body shop down the road or a scrap yard. So some the cars sitting there really aren't waiting for repairs. They are waiting to go to another facility. It's like what you just said. A lot of these cars are going to auto collision are coming out of yards like this.

Chairman Maier asked if anyone from the public would like to speak and there was no who wanted to speak.

Chairman Maier – We've got a response from the Town and they have no issue with the application as proposed. We've also heard from the Planning Board and I think the Planning Board is in favor of this application also.

Ms. Morley – Does the Planning Board give them the options after 7:00pm regarding the working hours of 7:00am -7:00pm.

Chairman Maier – My understanding is if it were deemed to be an issue after the operating hours, Mr. Pooler would have to come back for a variance. Is that correct?

Mr. Benedict – Correct.

Mr. Pooler – Is this office hours, where there are customers coming? I mean I'll drop equipment off at my shop at 2:00 in the morning if it's coming from Erie Pennsylvania.

Chairman Maier – I'll let Al make that determination. Other than that are you Ok with it Donna?

Ms. Morley – Yes.

Mr. Reinhardt – I agree, it's a piece of property that hasn't been used for a while. It seems that whole area is very similar and that the use will be similar.

Chairman Maier closed the public hearing and read the resolution.

## **RESOLUTION**

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on May 23, 2016 from Pooler Park LLC, 783 County Road 42, Victor, NY, 14564 to request two area variances for the facility at 7575 Hannan Parkway, Victor NY 14564; and,

WHEREAS, the applicant requests to have a motor vehicle repair facility 680 feet from the boundary of a residential district, whereas §211-24A(9)(b) states that a motor vehicle repair facility shall be at least 1,000 feet from any residentially zoned district; and,

WHEREAS, the applicant also requests to allow a crushed stone access road, whereas §211-24A(9)(d) states that all access roads must be paved; and,

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on May 29, 2016 and whereby all property owners within 500 feet of the application were notified by U. S. Mail; and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act and therefore does not require further action; and,

WHEREAS, a Public Hearing was held on June 6, 2016 at which time no resident spoke for or against the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for having a motor vehicle repair facility 680 feet from the boundary of a residential district and allowing crushed stone / milling based access roads at 7575 Hannan Parkway, Victor, NY 14564:

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: There are other businesses in the area that are very similar and that are closer to the residential district that have not had any problems that we are aware of. No one from the public spoke against the application.

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

Justification: The type of business is consistent with what has been at that location and is consistent with the neighborhood. The proposal seems to be the best alternative for the use of the property.

3. The requested area variance is not substantial.

Justification: There is a light industrial zoned parcel between the parcel in question and the residential parcel. Also there is another similar business in the area that is closer to the residentially zoned district than the parcel in question. Millings versus paving seems to be a sufficient solution.

- 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 business is very similar to what exists and what has existed prior to now and is consistent with some of the other businesses located on Phillips Road.

- 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.

DECISION:

On motion made by Keith Maier, and seconded by Michael Reinhardt:

NOW, THEREFORE BE IT RESOLVED that the application of Pooler Park LLC, 783 County Road 42, Victor, NY, 14564, requesting two area variances to allow a motor vehicle repair facility 680 feet from the boundary of a residential district and to allow milling stone access roads as opposed to paved access roads BE APPROVED:

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

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

Adopted: 4 Ayes, 0 Nays

Mr. Pooler – Thank you very much.

JONATHAN FRIEDLANDER BARN – SETBACK (Area variance)  
657 Old Dutch Road  
Appl. No. 10-Z-16

Applicant is requesting to construct a barn with a 25 foot front setback, whereas Schedule II, Area and Height Requirements for Residential Districts requires a 40 foot front setback. Mr. Friedlander obtained a permit to construct the barn in September 2015, however, since then road work has begun on Old Dutch Road and the right-of-way has moved 15 feet closer to the proposed construction, therefore requiring an area variance.

The secretary read the legal notice as it was published in The Daily Messenger on May 29, 2016 and the Chairman opened the public hearing.

Mr. Jonathan Friedlander addressed the Board.

Mr. Friedlander – Thank you for giving me the chance to present this request to you. You may recall this is based on an original variance that was issued back in 2014, which was based on the structure being ahead of the primary structure. At such time, the research was done and it was determined that that was acceptable and approved. Had we known that there was any kind of discrepancy in the right-of-way at the time we would have actually come forward and asked for a variance at that time. That is the variance we are asking for tonight. Based on maps that were on file with the Town, based on documentation that was out there and based on visits to the property with Mr. Benedict, we determined where the barn was best suited was in fact at the right-of-way according to maps on file there. In fact, Mr. Benedict was willing to come out and help and we actually placed the stake in the ground where the barn would go. That stake has remained unmoved; it's still in the same spot. So, nothing has changed in the project with regards to the barn itself or the proposed location that was originally approved. It changed when we started to build, or the excavation work a couple of weeks ago, we noticed that right-of-way signs that had been put in place with the improvements to the road that are now being made. They were contradictory to the maps that were on file and approved originally. That's when I reached out to Mr. Benedict to ask him the question if he could come out to try and help me figure out what was going on. It obviously became a discrepancy in where the right-of-way was. Again, the project hasn't changed, the location that was originally approved for all the reasons that it was approved are still in place. It's just that now there is a question. The suggestion by the Town attorney and everybody else involved was to alleviate any kind of discrepancy to actually ask for a variance. It would therefore be 25 feet from the right-of-way rather than 40 feet. At the time I submitted this there was still some question to which right-of-way was the true right-of-way. That's how unclear it was. I think Mr. Benedict's position at this time is that it should be perceived as a request for a variance.

Mr. Benedict – That's correct.

Mr. Nearpass – How did we determine what the real right-of-way is?

Mr. Benedict – The best we can tell at this point, the Town Engineer's office was able to go out and find the right-of-way pins on the inside of the curve or west side of the road and from there measured out the 49.5 foot right-of-way and put stakes in the ground to where it would be.

Mr. Nearpass – So we believe the new right-of-way is the standard.

Mr. Benedict – Without somebody else coming up with additional information, I believe that to be accurate. Everything that I had at my disposal, Mr. Friedlander submitted what he had, showed that the right-of-way was much closer to the existing road. In fact some points extending into the road. Today I found another subdivision map for across the road from Mr. Friedlander but it included that section of the road and it curiously only showed the west side of the right-of-way and the center line. It did not include the east side of the right-of-way which I thought was rather odd. I don't know if surveyors along the way misinterpreted that drawing or some other drawings. I don't know what happened.

Mr. Nearpass – How did the right-of-way get drawn? Obviously they went out and re-measured everything or can they redraw them, meaning, in certain areas the right-of-way is less than in other areas?

Mr. Benedict – Typically you would have a monument that is placed in the ground that establishes an elevation and a certain location giving latitude and longitude and then everything is based off of that. You put in pins based on radiuses from certain spots. In this case they had found pins that were next to the west side of the road and were able to build what they believe to be the right-of-way from those pins that they found. Typically an easement is by metes and bounds using radiuses, distances.

Mr. Friedlander – Again, just to reiterate, the original variance went by the subdivision map that we had when we purchased the property as well as an additional survey that was done at the time of going forward with this proposal for the original variance. The information at hand at the time suggested that it was just outside the right-of-way, where it should be.

Looking at the points that should be addressed, we have letters that were submitted, I'd actually like to read one. One of the neighbors that is most directly affected by it is Chauncy Young, who lives across the street. If I may before I read that, number one, about character of the neighborhood or detriment to nearby properties, I think if I could ask the Historian, Babette Huber, to be able to come up and say her words first. I know she has pulled away from some family matters to be here and I feel badly that she is sitting here, so if we could have her come up and say her words about the character of the neighborhood and the history, and then I'll read about the neighbor's impact.

Babette Huber, Town Historian, addressed the Board.

Ms. Huber – The last time I was here I talked to you about how I really am glad that I've come to the Zoning Board because usually I have to talk about barns being demolished. This is a barn being raised for an historic home. It's in a rural area. I think it still keeps with the integrity of the character of the neighborhood. It's a farm; it was a farm; it still is a farm and I encourage the Board, obviously, to support the variance. Mr. Friedlander didn't say anything to me, he just asked me if I would come and speak. In my opinion he got the variance earlier and the Town found the maps that changed his right-of-way. In my ignorance I'm thinking he's grandfathered and the alleged difficulty doesn't come from him, it comes from the Town because of the mapping situation. I think with the character, - he's going to put a barn up and it stays with the

character of the neighborhood, so am going to again encourage you to give him a second variance for the barn.

Mr. Nearpass – The property is zoned agricultural, right?

Mr. Benedict – It's residential-2, I don't know if it has an agricultural overlay or not.

Mr. Friedlander – We have an agricultural exemption. We hay the property and we actually have horses on the property. I brought pictures of it.

Mr. Nearpass – I was just wondering is this treated like a... would you say the bar is lowered for farming activities?

Mr. Benedict – If it is zoned agricultural and it is for agricultural activities, then I would say yes, the bar is lowered.

Mr. Nearpass – In this case it's zoned R-2, but they have an exemption for agricultural?

Mr. Benedict – That's what he says. If you want, I can run and check the maps to determine if it is an agricultural zoning by the county while you talk to him.

Mr. Nearpass – For me that would be helpful.

Mr. Friedlander – This was a photo that was submitted with the first variance request. Obviously this was grandfathered in because it is a very old barn. To show the character of the neighborhood, this barn is actually within sight of our property and is within about ten feet of Main Street Fishers, which is obviously much more heavily trafficked than Old Dutch Road, but just to show that it fit in the character of the way barns would have been built. I realize we are not in that time era anymore, but, in terms of historical perspective I just want to bring that.

As far as neighbors, they were all in favor of the first variance. There are not that many houses on the street. They were in favor, they are again this time. They've submitted a short support with the exception of Chauncy Young who lives across the street. If I may just read what Mr. Young wrote to the Board: Jonathan and Stacy have asked me to provide comments and support for the new variance they are seeking for a new barn on their property at 657 Old Dutch Road. Please forward this to the Board of Appeals to be read in the minutes of the public hearing on June 6, 2016. To the Town of Victor Zoning Board of Appeals: I live directly across the street from Jonathan and Stacy at 660 Old Dutch Road and I supported their application for the original variance. An unattached structure closer to the road right-of-way than the house, the main structure. The new barn is in character with the existing structure, parts of which were built in the 1820s. The new barn will provide shelter for vehicles, tractors, etc. that presently stand outside and I believe the new barn will enhance the value of the property. I also thought the location made sense from an ease of access point of view based on driveway configuration and other factors. After review, the Zoning Board of Appeals granted the variance. The new request for a variance for the same building and the same location resulted from differences in right-of-way measurements from one survey to the next. As I understand the situation, Jonathan and Stacy have been issued a building permit based on the first variance and their builder suggested

to them that they contact the Town because the right-of-way seemed to have changed within the reconstruction of the north end of Old Dutch. Since the new barn will occupy the same location and is of the same design that is under the previous variance, I continue to support Jonathan and Stacy in their efforts to obtain another variance. This time for setback from the road of right-of-way. Please take into consideration that if Jonathan and Stacy had acted sooner in building their barn this issue would be moot and the change of right-of-way, survey to survey, not an issue. If you have any questions, I can be reached at ... and his contact information.

I think it is also worth noting that Chauncy grew up in the house that we live in. It was his family's. It is something that he continually commends us for the work that we are doing in maintaining and actually restoring the property to its original historical nature. They provided us with original photographs dating back a long time and he's always complimenting the work we do.

Whether the benefits sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the area variance, I actually have here with me tonight James Brownsword, who is our general contractor on the project and has been from the beginning. James would like to say a few words in support of the issues that were in place the first time, which really determined that this is the best location for the building to go.

James Brownsword addressed the Board.

Mr. Brownsword – Good Evening. I've worked with the Friedlanders on this project, it's been a long time coming. All I can really do is go over the things that were in the original variance. Because of the grade of the property where the proposed barn is to go is quite a level area. The property really starts to drop away and that is why we kept it as close to the 40 foot boundary as we could. With the newly proposed right-of-way pushing the barn 15 feet farther onto the property, you run into all kinds of problems because of the leach field. We need to bring the driveway around the front of the barn, it would actually push the driveway on top of the leach field which is not really feasible. Because of the nature of the property there isn't, there are very few places where you can actually have a leach field on this property on Old Dutch Road. I mean with all that in mind, it was carefully considered where to place this barn. We kept it as tight to the right-of-way as we could. Essentially nothing has changed with the proposal except the confusion with the right-of-way. The road is essentially still in the same position. The barn is still in the same position. With the variance last time, I think there was a member of the Board who is not here tonight, actually paid a site visit and he witnessed the issues there are with trying to place the barn anywhere other than where it was granted the first time.

Mr. Benedict – It is not in a county agricultural district.

Ms. Morley – How much of the industrial traffic goes down that end of the road or do they come in off of Route 251?

Mr. Benedict – I don't know. I would think, my impression is that probably some go that way but most, if they've gone that way once, don't go there again.

Mr. Reinhardt – The first time this application came around I had concerns and you raised another concern by showing this photo that is 10 feet off the road. I don't know when this barn was built, but 1800s or so.

Mr. Friedlander – Like I said, it's an old barn, it's to show character.

Mr. Reinhardt – What brings attention and concern to me is that a structure ten feet from the road might have been safe back in the 1800s. There were no vehicles that could go 60, 80, 100, miles per hour. You have a curve. Now it's closer by a right-of-way. What also concerns me is what took so long for you to put a shovel in the ground. Two years ago this was granted and now you're coming back because you had a moving target. Something has changed. Had you put the shovel in the ground you wouldn't have had this trouble. Is that right?

Mr. Friedlander – I agree, absolutely. We were going to begin construction in the fall of last year and the builder's foreman left the company so he didn't have anyone to head the crew. While he was searching winter set in and it was one of those things. Spring is here, we were ready to go two weeks ago. That was the cause of the delay.

Mr. Reinhardt – The element on whether or not this was self-created, I don't think you can put the complete onus on the Town.

Mr. Friedlander – I didn't put the onus on the Town.

Mr. Reinhardt – Somebody did. It sure sounded like, whether it be the historian or the issue...

Mr. Friedlander – I never spoke with her about...

Mr. Friedlander – I'm paraphrasing, but I'm glad that you are saying that, so you are taking responsibility. Had you put the shovel in the ground sooner, you wouldn't have this trouble.

Mr. Friedlander – Absolutely. Correct. I'm not blaming anybody here, I'm just blaming the confusion. We did everything we were supposed to do. We went by Town maps, we went by our maps; we went by what existed. Mr. Benedict has confirmed that is what he was looking at. That's what existed in the Town record.

Mr. Benedict – That's correct.

Mr. Friedlander – Everybody, including the Code Enforcement Officer, said we were doing what we were supposed to do. As I said, we would have gone for our variance in setback from the right-of-way if we had known that other maps were different based on the conditions and the extra excavation and the greater impact on the environment, not to mention the leach field issue. Again, we would have addressed it at the time but we didn't believe that we needed to because we went out and visited the site. We looked at all the maps and Mr. Benedict concurred that this, to the best of his understanding, was where it was. I'm not pointing fingers at anybody and I didn't speak with Ms. Huber about this.

Mr. Reinhardt – Keeping in compliance with the variance and pushing it back the 15 feet, because now you are 15 feet closer to the right-of-way. Is that right? You are now 15 feet closer to the right-of-way than you were when the variance was granted.

Mr. Friedlander – Correct. The barn hasn't moved. The right-of-way moved 15 feet closer to us.

Mr. Reinhardt – What I'm trying to get my arms around here is, you want that driveway to go behind the barn and that is your justification on why you don't want to move the barn 15 feet farther back.

Mr. Friedlander – If we put the driveway before the barn then the barn will go 15 feet farther back and the barn would be in the leach field.

Mr. Brownsword – There needs to be access on the road side of the barn.

Mr. Reinhardt – Your access road that is going behind the barn...

Mr. Friedlander – Is an existing driveway.

Mr. Reinhardt – Is the leach field underneath that driveway?

Mr. Friedlander – No, it would be within the 15 feet beyond it. Can I go up to the map and show you. (*at the map*) Right now as the project would stand, this driveway will come to here. If everything were moved 15 feet farther, like that, it would sit on top of the leach field.

Mr. Reinhardt – The driveway or the building?

Mr. Friedlander – It wouldn't matter, either one would be detrimental to the leach field. As we designed it now, it's to keep it so that the access into the barn, there is a door here, it would have mowers and tractors go out this way.

Mr. Reinhardt – Why can't you go then on the side or the front? Why is it critical or significant that the driveway go behind the barn?

Mr. Friedlander – One of the two would have to shift because of the angles of the access from the road. It's either the driveway goes behind the barn and the barn shifts 15 feet beyond and still ends up on top of the leach field.

Mr. Reinhardt – How much farther can that barn go until it hits the leach field?

Mr. Friedlander – It's right on the edge right now. The way it has been designed and the way that it would be configured, it's right on the edge. That's why we picked the spot. That's why we didn't come for the right-of-way variance initially because we knew where it needed to be based on these factors that we are discussing now. There was no reason to ask for the variance. Because of the change in the map it is now an issue. Nothing has changed on the property, the factors involved or the property.

Mr. Reinhardt – I'm going by the map, the map that you submitted. There is a driveway that goes behind the garage, the proposed barn. (Correct) What I want to know is how much farther the proposed site was and the variance that has been granted, how much farther back can it go on top of that driveway that is now indicated. Zero, one foot?

Mr. Friedlander – It's going to go partially on top of this but that's in order to have a workable driveway that has to be shifted.

Mr. Nearpass – You're saying that has been shifted as far as it can possibly go?

Mr. Brownsword – It's not just the issue of the driveway, because of the grade it pulls away. If you moved two feet as it starts to fall away, you have to have a lot more fill and dirt in there to hold that driveway up. Every foot you go is exponentially more. It goes out farther onto the leach field just to try and keep everything running level around there.

Mr. Friedlander – It's going to be graded and sloped down, otherwise...

Mr. Reinhardt – Are you telling me that there is no alternative whatsoever. You must have a driveway that goes behind the barn? Yes or No?

Mr. Friedlander – Yes.

Mr. Reinhardt – Why?

Mr. Brownsword – It's a 40 foot barn. It's a large structure. You can get in each end, but to be able to use it efficiently and especially since it's going to be built as a kind of historic barn. They had doors through the center.

Mr. Friedlander – And it gives access on this side of the barn. It needs to come out onto a hard surface.

Mr. Nearpass – I recall having a very similar discussion when we had the application in front of us. I kind of see it as a moot point given that I think we've already had this discussion. I feel like they've convinced us in the prior granting of the variance that the location that they proposed is the location that we accepted. A wise man once told me that time is the killer of all deals. This one certainly is kind of teetering on that. The one thing that hasn't changed is the distance from the road to the barn, it hasn't changed. The right-of-way has changed but the road hasn't moved an inch, has it?

Mr. Friedlander – If anything, it's going to be moving in the other direction.

Mr. Nearpass – Is there anything telling me that the road is going to move closer to the barn?

Mr. Friedlander – No, it's actually going to move farther.

Mr. Benedict – I don't have any information that would say it's going to move closer to the barn. If anything I would say it's probably going to move farther away from the barn. It's already extending...

Mr. Nearpass – So, to me this one follows in the category – there was inaccurate data on both sides, we approved it. The safety factor to me is from where the road is, we approved it being the same distance from the road as it is now; I'm completely OK with it. I understand that the right-of-way has moved, it's a marker, it's something that both sides should have probably caught at one point. I don't think we're going to solve that during the debate tonight. I support....

Mr. Friedlander – I appreciate that. I'd like to add one more thing. It is my understanding that the Highway Superintendent doesn't believe that it is an issue at 25 feet.

Mr. Nearpass – I actually thought in his email that he sent he said as long as you don't put it in the right-of-way! "No I think it should be OK as long as it is outside of the right-of-way!" I would expect him to say that. Again, given the history and everything that has transpired over this, it looks like you are 22 feet from the right-of-way, not 25.

Mr. Friedlander – Well, that's a mistake.

Mr. Nearpass – Maybe it's 25, maybe it's a two or a five. Just want to make sure you have the numbers right.

Mr. Friedlander – We requested 25 feet, so it's never been changed. There has been no change. That would suggest a change, we are not requesting any kind of a change.

Mr. Nearpass – I'm OK with it as proposed given that the road hasn't moved and whatever mix-ups that have happened with your surveys or the Town's surveys and that the variance was granted. Again, the safety issue was from the road and that hasn't changed.

Chairman Maier – Do you know why the barns were built close to the road in the old days?

Mr. Friedlander – My guess would be to have closer access to be able to get the products in and out.

Chairman Maier – They were farming different fields, that's why they did that and there wasn't a whole lot of traffic then. A lot of what we do, the three rod roads, the four rod roads, railroad tracks are based on wagon wheel widths. A lot of that was determined back in the old days and the reason that the barns were up close was that they had to farm different parcels and it was easy just to pull out and get on the road rather than going through mud in the field.

The existing Code, if my experience is accurate, is that the residents of the Town have decided that they don't want accessory structures in front of primary residences. Driving down roads, like this road, and other roads, their preference is to see trees and a wooded area and I can appreciate that even though I think you have a very nice barn.

The issue I had the first time and that I still have is that looking at the contour lines and visiting the property, there is an alternative site that in my view is probably better than this site. I

expressed that at the last meeting. I think that where you have labeled gravel drive, if you were to take the front line of the house and extend it along that driveway, I think you have a fence there. If I were building a barn, that's where I would put that barn because I think that is the flattest spot in that area. I think you have a fence there on that corner, does that picture show a fence?

Mr. Friedlander – That's our horse Pasture.

Chairman Maier – Looking at contour lines and visiting the site, in my opinion, that is the optimum spot in terms of grading or having to do earthwork, that's the optimum spot to put a barn. We may disagree, but from my experience there is the least amount of grading, you are not on any septic system, you are behind the front line of the home and you are certainly are beyond the setback. You certainly meet the setback. You would have to move the fence.

Mr. Friedlander – First of all that's a hardship because there are animals that are counting on that spot and that location. The other thing is that this is a large barn. It's 48 feet. I would ask James to come into this discussion, but I do believe the structure itself, plus any kind of roadway that would access into that, would still go on the leach field on that end. This is a garage, half of this is a garage.

Chairman Maier went up to the plan and indicated where he would put the barn. There was disagreement on where the slopes were steeper. Mr. Friedlander said that a Drumlin would be cut into with Chairman Maier's suggestion. Mr. Friedlander stated he had been on the Comprehensive Plan Committee for six years. He mentioned that the people of Victor wanted to preserve the integrity and history of an agricultural community. Chairman Maier stated that if the contour lines were to continue off the map provided with the application, and based on what he saw in the field, the barn placement was an alternative or easy option and the flattest area.

Mr. Friedlander – Half of the building is a garage, if the garage were over here, in terms of accessibility to the house, even if the contour issues were in fact what you are professing, the garage access from here to the house versus here to the house, I think that's a little...

Chairman Maier – I understand and your points are the same as before and I'm just saying for the record, my points are the same as before, having visited and looking at the contour lines.

Mr. Brownsword – I don't think these contour lines..., do you remember when you came out or the spot he's talking about because the Town was digging the culvert there.

Mr. Friedlander – It is so significant that climb there, I don't see... with all due respect...

Mr. Brownsword – I would argue that that's one of the steepest parts that's on the property right there.

Mr. Friedlander – I do not believe that that is a level spot.

Chairman Maier – It shows on your contour map that it's more level than....

Mr. Brownsword – Well, maybe we've got another dodgy map.

Chairman Maier – I'm going with what I remember being out there also. That's why I opposed it the first time. I looked at it and thought it was a perfect spot without having to get a variance.

Mr. Friedlander – This is much steeper. This is actually the most dangerous part of the Pasture when I cut the pasture because of how steep it is.

Mr. Nearpass – The map you gave us doesn't give us the contour of that area.

Chairman Maier – It doesn't, but if you extend the contour lines off of what is there....

Mr. Nearpass – If they really do extend over. I think he's trying to say that you can't just extend the contour lines; that the contour changes on the other side of the fence.

Chairman Maier – it doesn't change that quickly. I agree that farther down there is undulation.

Mr. Friedlander – Right here it starts to climb very steeply away from the road. This is above grade level by 15 feet. If you as Mark Years, Highway Superintendent, who is doing the work, it look down, it's a drop off of about 15 feet. There is a greater environmental impact here than here. I think the hardship created by putting a garage here versus here close to the house, the hardship to now reconfigure and do something different with our horses is again another hardship. We would like a driveway that goes around the barn

Mr. Friedlander continued to discuss his hardship if the barn were placed other than as proposed. It centered on access of vehicles to the barn and that the structure would be useless if it did not have access to it.

Mr. Friedlander – Mr. Benedict, for the record, are there precedents where there are structures within 40 feet of the right-of-way?

Mr. Benedict – There are some subdivisions that have allowed houses 30 feet from the right-of-way. There are some townhomes that are even closer to the road.

Mr. Friedlander - Is there no weight or bearing given to the opinion of Mark Years? I think if he truly contradicted or had an issue with it, he would state it. I think the fact that he didn't suggests that he agrees that it's not a safety issue, not a concern.

Mr. Reinhardt – I don't think that's a fair leap. What his concern is, is that you are not in his way. So when Highway maintenance needs to be done, you are not in his way. He's not a safety expert, he's not an attorney. As a Highway Superintendent, he's in charge of equipment, don't mix apples and oranges.

Mr. Friedlander – So I'm wrong in the assumption that his opinion would address that. I think the question was asked if he had any concerns and he said no as long as it is not in the right-of-way. It doesn't mean that he is clear on the effects of being within 25 feet.

Mr. Reinhardt – We’ve had a handful of issues before and variances were denied. One of them was at Auto Auction, that monument was too close to the road and a vehicle hit it. We had to tell them that they had to push it back, it’s too close to the right-of-way. There are safety concerns, among other things in the Code, ...

Mr. Friedlander – Ok, I wrongly assumed that that was what he was being asked and what he was addressing.

Mr. Nearpass – To me if it was safety, we wouldn’t have approved it to begin with because it is the same distance from the road as it was when we granted the variance to put the building there.

Mr. Reinhardt – I’m not totally disagreeing with you, but what I take exception to is making the leap that a Highway Superintendent says it’s OK, therefore it’s safe. I don’t agree with that at all.

Chairman Maier – So there have been no negative responses to your application. I think that’s how we would interpret that.

Mr. Reinhardt – Our function as a Board is to find facts. If anyone of us through our discussion, debate, what have you, disagrees with an opinion, is to say so and to create that record.

The application was opened up to the public.

Bill Smith of 8010 Main Street Fishers addressed the Board.

Mr. Smith – That’s about 800 feet northeast. I completely support Mr. Friedlander’s application. I’ve been traveling Old Dutch Road for over 60 years. I love it. I hope you don’t pave it. There is a big difference between travelling Old Dutch Road and Route 96. I’m with you on safety, but, anybody that travels that road, I would be amazed to see anybody go over 20 miles per hour. I really do not believe that the proposed barn is going to be a safety issue. I think it will be in total character with the area and be a big compliment to the Fishers area. Thank you.

Mr. Benedict – I might add in about the leach field. I would be careful in removing driveways or buildings anywhere near it. During construction, there are many vehicles, directing them around that side of the building. You don’t want to be driving on a leach field, it compacts the soil and makes it so that it is unusable. That’s my two cents.

Ms. Morely – I’m OK with it, I have the same feeling as Matt. We approved it before, we’re not moving the road.

Mr. Reinhardt – When does the shovel hit the ground? When are you going start digging?

Mr. Friedlander – I believe Thursday if this is approved. Two day if this is approved.

Mr. Reinhardt – Then I don’t have any objections.

Chairman Maier – Al, is their permit still negotiable.

Mr. Benedict – We haven't sent a notice out to retract it at this point.

## **RESOLUTION**

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on May 23, 2016 from Jonathan Friedlander of 657 Old Dutch Road, Victor, NY to construct a barn with a 25 foot front setback, whereas Schedule II, Area and Height Requirements for Residential Districts requires a 40 foot front setback; and,

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on May 29, 2016 and whereby all property owners within 500 feet of the application were notified by U. S. Mail; and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act and therefore does not require further action; and,

WHEREAS, a Public Hearing was held on June 6, 2016 at which time one resident spoke for the application and three letters had been received in favor of the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact to construct a barn with a 25 foot front setback at 657 Old Dutch Road, Victor, NY 14564:

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: There is one other barn that is located close to the road in the area. There was positive input from neighbors and the Town Historian spoke in favor of it.

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

Justification: Other locations that appeared possible initially were ruled out by further research of topography and leach fields.

3. The requested area variance is not substantial.

Justification: Twenty five feet is less than half of the required 40 feet.

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

Justification: There was a variance granted in October 7, 2014 for the placement of this barn. At the moment Old Dutch Road is a dirt road and the only issue is that the placement of the barn will be 15 feet from the right-of-way, however, the placement of the barn is still the same distance from the road.

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.

#### DECISION:

On motion made by Mathew Nearpass, and seconded by Donna Morley:

NOW, THEREFORE BE IT RESOLVED that the application of Jonathan Friedlander, 657 Old Dutch Road, Victor, NY 14564, requesting an area variance to construct a barn with a 25 foot front setback BE APPROVED:

FURTHER RESOLVED that the following conditions are imposed to minimize any adverse impact such variances may have on the neighborhood or community:

1. Any lighting will be dark sky compliant;
2. That the barn will be constructed as per the plans submitted.

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

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

Adopted: 3 Ayes, 1 Nay

On a motion by Keith Maier, seconded by Matt Nearpass, RESOLVED and unanimously agreed, that the meeting was adjourned at 8:55 PM.

Debby Trillaud, Secretary