

A regular meeting of the Village of Victor Zoning Board of Appeals (ZBA) was held on Wednesday, June 15, 2016 at the Village Hall, 60 East Main Street.

MEMBERS PRESENT:

Chairperson	Sean Sanderson
Member	Brian Pancoast
Member	Jim Caggiano
Member	Kate Gruenfelder
Member	David Chalupa
Zoning Clerk	Roseanne Turner-Adams

OTHERS PRESENT: Jason Ashton, Steve Mancini, Sean McAdoo VFD, Al Benedict, Dr. Bill Ferris, Doug Eldred, Dave Nankin, John Holden, Mike Crowley

The ZBA meeting was called to order by Chairperson Sean Sanderson at 7:00 pm.

Salute to the Flag

Resolution #06-16ZBA

Acceptance of Minutes

On a motion made by Kate Gruenfelder, seconded by David Chalupa, the following resolution was ADOPTED 4 AYES 0 NAYS 1 ABSTAIN (Brian Pancoast was absent)

Resolved to accept the minutes dated May 18, 2016.

Ferris Terrace/Dr. William Ferris

Area Variances (3)

Chairperson Sanderson stated that this is a continuation of a meeting in which the public hearing portion has been closed so this meeting will consist of the Zoning Board Members balancing test.

Mr. Sanderson then read the requested area variances into the record:

“The application of Mr. Bill Ferris, 156 Brentwood Lane, Fairport, New York, for the following area variances:

1. An area variance to allow a building height of 44’ whereas 35’ is allowed per Section 170-13D.
2. An area variance to allow a front setback of 4.5’ minimum to 10’ maximum whereas 15’ is allowed per Section 170-13G(1).
3. An area variance to allow the development of the project as proposed to not conform to the regulations contained within the (R-3) Residential District per Section 170-12A(2) whereas R-3 district regulations are for apartment houses as outline in Section 170-12C(1-17). The variance from Section 170-12A(2) will eliminate the use of the R-3 District bulk regulations for development of the project and allow it to be developed under the existing underlying Business District regulations.”

Ferris Terrace/Dr. William Ferris
Height Variance

Mr. Sanderson stated that in the 44' height variance the measurement is taken from street level to the eave and peak of the roof. Mr. Sanderson stated that if a flat roofed building were built a variance of 1' would be needed. Mr. Sanderson asked if a 35' flat roofed building is an option to avoid the need for a variance. Dr. Ferris stated that retailers have asked for higher ceilings but that a 35' flat roofed building is feasible.

Mr. Pancoast stated that if retailers have asked for higher ceilings that as far as he is concerned a 35' building is not feasible in reference to the balancing test.

Mr. Caggiano stated that the task of the Zoning Board members is to interpret the code not to worry if the retailers can or cannot make it feasible. Mr. Caggiano stated that he is all for growth in the village but that based off the balancing test that the members need to decide whether a variance is granted or not and not worry about whether it is feasible for the retailers.

Mr. Pancoast stated that at this point the decision that the Zoning Board members have at hand is to decide whether to deviate from the code which is where the balancing test comes into play.

Mr. Sanderson stated that he would like to get back to focusing on the balancing test starting with the height variance.

Discussion amongst ZBA Members and Dr. Ferris & Doug Eldred regarding balancing test questions

The ZBA then went through the Area Variance Criteria balancing test:

- Whether the benefit can be achieved by other means feasible: *yes*
- Will the variance create an undesirable change in the neighborhood: *no*
- That the request is substantial: *yes*
- Whether the request will have adverse physical or environmental effects: *no*
- That the alleged hardship was self-created: *yes*

Lengthy discussion on the area variance criteria balancing test results

Mr. Sanderson stated that based on the balancing test he asked the applicants whether they want to propose a 44' peaked roof or a 36' flat roof for their variance. Mr. Sanderson asked the applicants if they would like to take a recess to have a discussion.

The board took a 5 minute recess so that the applicants could have a discussion

Mr. Eldred stated that the applicant's benefit of a peaked roof outweighs any detriment to the community. Mr. Eldred stated that they would like to propose a variance for the 44' peaked roof and if it is denied then they would ask for a vote on a 36' flat roof variance.

Discussion amongst board, Mr. Crowley & Mr. Holden on the variance procedure

Mr. Sanderson stated that conditions would be imposed on all variances contingent on the applicant purchasing the properties in a specific amount of time and for the project to come to fruition in a reasonable amount of time.

Mr. Pancoast stated that since there are several properties involved in this project that need to be combined into one parcel, how do we identify the address for this variance.

Mr. Benedict stated that the site plan to be approved can be referred to as the address.

Mr. Eldred stated that the Planning Board needs to approve the consolidation plat and a condition to grant the variances can be that the consolidation plat needs to be approved and filed.

Resolution #07-16ZBA
Ferris Terrace/Dr. William Ferris
Height Variance

On a motion made by Brian Pancoast, seconded by Kate Gruenfelder, the following resolution was APPROVED 4 AYES 1 NAY (J. Caggiano)

To grant an area variance to allow a 44' peaked or gabled roof with average building height between the eave and peak of the building measured from street level for Ferris Terrace as illustrated in the architectural perspective drawings that were submitted with the application on March 23, 2016. To be valid once the consolidation plat has been approved and filed and void if the C of O is not issued within 36 months from the date of this resolution.

WHEREAS, an application was received by Roseanne Turner-Adams, Zoning Clerk, for the Zoning Board of Appeals, from Dr. William Ferris; on March 24, 2016, requesting three area variances for Ferris Terrace.

WHEREAS, said application was denied by the Code Enforcement Officer for the Village of Victor on the basis of Sections 170-13D; 170-13G(1); 170-12A and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on April 8, 2016; and,

WHEREAS, all adjacent property owners were timely notified of the hearing and the purpose of the hearing by mail; and,

WHEREAS, a Public Hearing was held on April 27, 2016 at which time all those who desired to be heard were heard; and,

WHEREAS, after viewing the premises and after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Village of Victor Zoning Board of Appeals made the following findings of fact:

- The need for a variance to create a gabled or peaked roof on the building. It was determined that many structures in the neighborhood have gabled or peaked roofs.
- The ability to do a gabled vs. flat roof had a considerable financial impact to the applicant.
- The board determined that there are numerous structures in the Village over the 35' height limit.
- Through much discussion the board felt that this potential project would benefit the character of the neighborhood.

The Board determined that strict application of the code in this case will not serve any valid public purpose which outweighs the injuries to the applicant.

That an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by the granting of this variance.

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

That the requested variance is substantial.

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

That the alleged difficulty was self-created.

That the variance proposed is not the minimum variance necessary.

That the requested variance will not alter the essential character of the neighborhood.

NOW, THEREFORE BE IT RESOLVED that the application of Dr. William Ferris for an area variance to allow a 44' peaked or gabled roof with average building height between the eave and peak of the building measured from street level for Ferris Terrace as illustrated in the architectural perspective drawings that were submitted with the application on March 23, 2016 **Be Approved (with the following conditions:)**

- To be valid once the consolidation plat has been approved and filed.
- Void if the C of O is not issued within 36 months from the date of this resolution.

Be It Further Resolved:

- That the applicant obtains the proper approvals from the Planning Board.
- That the applicant obtains the proper building permit(s) from the Building Department.
- That all construction shall conform to New York State Building and Fire Codes.
- That the applicant shall conform to the Village of Victor Sediment and Erosion Control Code.

**Ferris Terrace/Dr. William Ferris
Setback Variance**

Mr. Sanderson stated that the applicant is requesting a front setback of 4.5' minimum to the property line behind the signal pole to a 10' maximum front setback for the remainder of the building.

The ZBA then went through the Area Variance Criteria balancing test:

- Whether the benefit can be achieved by other means feasible: *no*
- Will the variance create an undesirable change in the neighborhood: *no*
- That the request is substantial: *yes*
- Whether the request will have adverse physical or environmental effects: *no*
- That the alleged hardship was self-created: *yes*

**Resolution #08-16ZBA
Ferris Terrace/Dr. William Ferris
Setback Variance**

On a motion made by Kate Gruenfelder, seconded by David Chalupa, the following resolution was APPROVED 4 AYES 1 NAY (J. Caggiano)

To grant an area variance to allow a front setback of 4.5' minimum to the property line behind the signal pole to a 10' front setback for the remainder of the building for Ferris Terrace as illustrated in the rendered site plan that was submitted with the application on March 23, 2016. To be valid once the consolidation plat has been approved and

filed and void if the C of O is not issued within 36 months from the date of this resolution.

WHEREAS, an application was received by Roseanne Turner-Adams, Zoning Clerk, for the Zoning Board of Appeals, from Dr. William Ferris; on March 24, 2016, requesting three area variances for Ferris Terrace.

WHEREAS, said application was denied by the Code Enforcement Officer for the Village of Victor on the basis of Sections 170-13D; 170-13G(1); 170-12A,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on April 8, 2016; and,

WHEREAS, all adjacent property owners were timely notified of the hearing and the purpose of the hearing by mail; and,

WHEREAS, a Public Hearing was held on April 27, 2016 at which time all those who desired to be heard were heard; and,

WHEREAS, after viewing the premises and after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Village of Victor Zoning Board of Appeals made the following findings of fact:

- There are numerous instances of old and new construction within this area of the Village bringing buildings to the street front.
- Bringing the building to the street front is within the recommendations of the Saratoga Plan that was completed for the Village.
- It was determined that there would be no negative impact to the community by the granting of this variance.
- Through much discussion the board felt that this potential project would benefit the character of the neighborhood.

The Board determined that strict application of the code in this case will not serve any valid public purpose which outweighs the injuries to the applicant.

That an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by the granting of this variance.

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

That the requested variance is substantial.

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

That the alleged difficulty was self-created.

That the variance proposed is not the minimum variance necessary.

That the requested variance will not alter the essential character of the neighborhood.

NOW, THEREFORE BE IT RESOLVED that the application of Dr. William Ferris for an area variance to allow a front setback of 4.5' minimum to the property line behind the signal pole to a 10' front setback for the remainder of the building for Ferris Terrace as illustrated in the rendered site plan that was submitted with the application on March 23, 2016 **Be Approved (with the following conditions:)**

- To be valid once the consolidation plat has been approved and filed.
- Void if the C of O is not issued within 36 months from the date of this resolution.

Be It Further Resolved:

- That the applicant obtains the proper approvals from the Planning Board.
- That the applicant obtains the proper building permit(s) from the Building Department.
- That all construction shall conform to New York State Building and Fire Codes.
- That the applicant shall conform to the Village of Victor Sediment and Erosion Control Code.

Ferris Terrace/Dr. William Ferris

R-3 Restrictions Variance

Mr. Sanderson stated that the applicant is requesting an area variance to allow the development of the project as proposed to not conform to the regulations contained within the (R-3) Residential District per Section 170-12A(2).

The ZBA then went through the Area Variance Criteria balancing test:

- Whether the benefit can be achieved by other means feasible: *no*
- Will the variance create an undesirable change in the neighborhood: *yes*
- That the request is substantial: *yes*
- Whether the request will have adverse physical or environmental effects: *no*

- That the alleged hardship was self-created: *yes*

Resolution #09-16ZBA
Ferris Terrace/Dr. William Ferris
Setback Variance

On a motion made by Brian Pancoast, seconded by Kate Gruenfelder, the following resolution was APPROVED 3 AYES 2 NAYS (J. Caggiano/David Chalupa)

To grant an area variance to allow the development of the project as proposed to not conform to the regulations contained within the (R-3) Residential District per Section 170-12A(2). To be valid once the consolidation plat has been approved and filed and void if the C of O is not issued within 36 months from the date of this resolution.

WHEREAS, an application was received by Roseanne Turner-Adams, Zoning Clerk, for the Zoning Board of Appeals, from Dr. William Ferris; on March 24, 2016, requesting three area variances for Ferris Terrace.

WHEREAS, said application was denied by the Code Enforcement Officer for the Village of Victor on the basis of Sections 170-13D; 170-13G(1); 170-12A,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on April 8, 2016; and,

WHEREAS, all adjacent property owners were timely notified of the hearing and the purpose of the hearing by mail; and,

WHEREAS, a Public Hearing was held on April 27, 2016 at which time all those who desired to be heard were heard; and,

WHEREAS, after viewing the premises and after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Village of Victor Zoning Board of Appeals made the following findings of fact:

- The board determined that since the proposed project was both commercial and R-3 (residential) in nature and there are numerous properties within the neighborhood already conforming to mixed use, it would be mutually beneficial to the applicant and the community to proceed as a developed property according to the business district.
- Through much discussion the board felt that this potential project would benefit the character of the neighborhood.

The Board determined that strict application of the code in this case will not serve any valid public purpose which outweighs the injuries to the applicant.

That an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of this variance.

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

That the requested variance is substantial.

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

That the alleged difficulty was self-created.

That the variance proposed is not the minimum variance necessary.

That the requested variance will not alter the essential character of the neighborhood.

NOW, THEREFORE BE IT RESOLVED that the application of Dr. William Ferris for an area variance to allow the development of the project as proposed to not conform to the regulations contained within the (R-3) Residential District per Section 170-12A(2).

Be Approved (with the following conditions:)

- To be valid once the consolidation plat has been approved and filed.
- Void if the C of O is not issued within 36 months from the date of this resolution.

Be It Further Resolved:

- That the applicant obtains the proper approvals from the Planning Board.
- That the applicant obtains the proper building permit(s) from the Building Department.
- That all construction shall conform to New York State Building and Fire Codes.
- That the applicant shall conform to the Village of Victor Sediment and Erosion Control Code.

ADJOURNMENT

Meeting was adjourned on motion at 8:27 pm.

Roseanne Turner-Adams, Minutes Clerk