

A regular meeting of the Town of Victor Zoning Board of Appeals was held on July 18, 2016 at 7:00 P.M. at the Victor Town Hall, 85 East Main Street, Victor, New York, with the following members present:

PRESENT: Keith Maier, Chairman; Scott Harter, Vice-Chairman; Mathew Nearpass; Donna Morley

ABSENT: Michael Reinhardt

OTHERS: Sean McAdoo, Code Enforcement Officer; Dan Crowley, Town Board Liaison; Rudy Kumpf; Jerry Rampe; Christina Green; Josh Palmer; Skip Lehman; Sam Damico; Sam Damico Sr.; Anthony Venezia; Scott DeHollander; John Maloney; Mark. S. Crane; Debby Trillaud, Secretary

The meeting was opened and the Flag was saluted.

### **APPROVAL OF MINUTES**

On a motion by Donna Morley, seconded by Mathew Nearpass,

RESOLVED that the minutes of June 6, 2016 be approved as submitted:

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

Approved: 3 Ayes, 0 Nays 1 Abstention

On a motion by Donna Morley, seconded by Mathew Nearpass,

RESOLVED that the minutes of July 5, 2016 be approved as submitted:

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

Approved: 4 Ayes, 0 Nays

**PUBLIC HEARING****KUMPF – STAND ALONE ACCESSORY STRUCTURE (Area Variance)**

670 County Road 9

Appl. No. 16-Z-16

Applicant is proposing to subdivide his lot which would leave a barn as the only structure on a single lot, whereas, §211-19A(3) of the Town of Victor Code states accessory structures that are clearly subordinate to a principal building are a permitted use in residential districts.

The secretary read the legal notice as it was published in The Daily Messenger on July 10, 2016.

Mr. Rudy Kumpf addressed the Board.

Mr. Kumpf – I've lived on Victor-Egypt Road, which is County Road 9 for 52 years. My first house was adjacent to this property, to the left of it. I bought a lot 52 years ago, built a house and about 10 years later the Fridd property came up for sale and I bought that. It was approximately 50 acres. There was a barn and a house on that piece of property. The barn had collapsed; the house was still fairly decent. After we bought the property my wife and I decided to break the farmhouse off and fix it up a little bit and sell it and keep the remainder of the land. We broke that lot off, the farmhouse and then we decided it was in better shape than we thought. I was in the construction business before I retired so we gutted it, remodeled it and made it into the apartments which we still own. It's the adjacent property to the right. That left 48 acres with just the barn on it. For 25 years the barn was the sole building on that piece of property.

In 2006 I built a house on that property to the left of the barn. In so doing, which I didn't know, I brought the property into compliance. Prior to that there was no dwelling on that property other than the barn. We sold 42 acres to Brian Reh who was a neighbor. His land bordered my land. He bought that in 2007 or 2008. That left me with five and a half acres where the house and the barn sit.

Last year my wife and I decided to downsize. We want to build a smaller house by the barn, Maybe a 1,000, 1,200 square feet, something a little more affordable. I wanted to put my house up for sale. We thought we would divide the five and a half acres in half. If you look at the drawings, the plans I have, lot 2 would be the house. The line down the middle doesn't exist now. When I went to the Planning Department I said we would make a 2 ¾ acre lot for the house and I'll keep a 2 ½ acre lot where the barn is and build a smaller house. I went through the application, we were set to have the hearing and then Al realized that lot 1 would become non-conforming because now the barn would be standing alone again.

It's my intent, upon the sale of the house where I live now, to take some of those funds and build a smaller house on lot 2, but I can't make the subdivision without a variance to allow the barn to go back to sitting alone until such time that I sell my house. The house is up for sale now. It's kind of convoluted but that's how I got to where I am now.

Ms. Morley – I thought I read that you would use the barn as part of, or build the house there?

Mr. Kumpf – If you look at the blueprints that I have. The house is only 22 feet by 53 feet. I could go to the left of the barn or I could go right in front of the barn. I've got plenty of room in both spots. I'd prefer to go to the left of the barn and then the house would not have a garage because I could use the barn as my garage. The barn is in good shape.

Ms. Morley – How would you access lot 1 without a driveway?

Mr. Kumpf – Lot 1 has a driveway right now. If you see the two straight lines on the plan, that's the driveway coming in now. That's there already. Nothing would change on the appearance of that barn. It would stay exactly as it is and has been all these years. I have 92 feet to the left and I have 90 feet to the front. A small house would fit in there easily. The problem being is that I can't do that until I sell my house and I can't sell my house because of the fact that it would create a non-conforming lot.

Mr. Harter – Your intention is to eventually build a house on lot 1 that would also be able to use the pole barn?

Mr. Kumpf – Right. I use the pole barn now. My son keeps his boat in there, I keep my boat in there. I've got a lawn tractor.

Mr. Harter – I think you said you were considering a house that was 22 feet by 53 feet?

Mr. Kumpf – It's approximately 1,200 square feet. We've got a drawing that we haven't really tweaked completely yet. It's going to be between 1,000 and 1,200 square feet.

Mr. Harter – You are estimating that you could put it to the south, or left of the pole barn?

Mr. Kumpf – That's where I would like to put it. Let it come in front maybe half the distance, maybe 30 feet forward of the barn. I've built six houses in the Victor area, well not all in the Victor area, none of them have been eyesores in all honesty. They haven't been.

Mr. Harter – The purpose of my question is to determine the overall game plan for the parcel because it seems to me the variances that you are requesting won't matter if you pursue your home building project. It seems to me that then you will have a habitable structure along with an accessory structure on a lot and this variance will no longer really matter.

Mr. Kumpf – Correct. The problem I have is I can't make the subdivision without it.

Mr. Harter – I understand that. There is to my understanding a front setback requirement. I just want to check with Sean, is it 60 feet?

Mr. McAdoo – It's 40 feet.

Mr. Harter – A 40 foot front setback from your 90 foot measurement, plus or minus, would then give you 50 feet to play with to situate your house ahead of the primary structure.

Mr. Kumpf – It's just going to be a ranch, one story high.

Mr. Harter – The purpose of mentioning that is just to qualify that another item in the Code is that the primary structure has to set ahead of the accessory structure.

Mr. Kumpf – Does the entire structure have to be...?

Mr. Harter – No, I don't think so.

Mr. McAdoo – Just the front line, as you take a line parallel to the road...

Mr. Kumpf – I have more than enough room to do that.

Mr. Harter – Once again, that's the purpose of my question, to define your intention so that when you get to that point that we are not meeting again for yet another variance.

Mr. Kumpf – No. I didn't know that I had created this situation when I built the house ten years ago. Nobody said anything to me about it, so I didn't know.

Mr. Nearpass – I'm OK with it in terms of the criteria, the Code. By allowing him to split the land in half for the most part, I don't see an environmental impact, nothing would change.

Mr. Kumpf – Nothing is going to change on the barn other than the fact that I'd like to be able to build a house there.

Mr. Nearpass – I understand your intention and I'm OK with it.

Chairman Maier – The driveway setback from the property line needs to be 10 feet, are you aware of that?

Mr. Kumpf – It is and the big drawings that you have are to scale and if you scale that off you'll notice that there is 12 feet from the edge of the driveway to where the property line is going to be.

Chairman Maier – If you go in for subdivision approval, the Planning Board is going to require that you have that 10 feet.

Mr. Kumpf – We already discussed that with the fellows that did the drawings and survey.

Chairman Maier – The barn is approximately 28 years old?

Mr. Kumpf – No, the barn is 35 years old. Deduct nine years from when my house was there. There were 24 years that it sat alone, by itself. It's a Morton building.

Chairman Maier – One of the things I want to ask the Board is if we want to put conditions on the approval. Conditions in that perhaps a building permit be issued within a time frame or approval from the Planning Board within a time frame so that we put some sort of parameters on what we want to allow. I know we have a one year window where they need to make meaningful progress or the variance expires.

Mr. Nearpass – Is that on all variances?

Mr. McAdoo – Yes.

Mr. Nearpass – Even with that, this is a weird one in that if he did nothing and the variance expired, it's not like you're going to ask him to take the building down, right?

Chairman Maier – What I'm trying to do is help him and at least give meaningful guidelines because the Code says "meaningful progress". If we can help define meaningful progress, we may not be here in a year, so it might be for the Zoning Board a year from now. You can get an extension from that one year. If we were to grant approval tonight and you did nothing for one year, the variance we gave you would expire. You or someone else would have to come back in and request a variance again. I believe the language says you need to be making meaningful progress. What I'm proposing or asking is if we put a condition that the building permit be issued within one year, would that be reasonable parameters for making meaningful progress. Are you trying to get a building permit within a year?

Mr. Kumpf – A little bit depends on how quickly I sell the house. The sign just went up a little over a week ago. We've had some inquiries. As soon as the house is sold, I'll be living at the cottage. When we move out of that house, in the interim, I'll be living at the cottage until such time as I can build a house. The situation being is, the house is free and clear, so I'm going to take the monies from that house and part of it is going to go towards building the new house. That's our game plan, that's how we can make it affordable. Doing that a little bit hinges on how

quickly I can sell the house. The faster I sell it, the faster, immediately, I would start building the house.

Mr. Harter – I have a question for Sean. In our sunset clause is there a provision for renewal for a situation like this? For example he gets the variance tonight but he doesn't start his project for a year and a half and he has to come back. Is there a streamlined way for him to do that or is it back to square one?

Mr. McAdoo – He has to come back to the Board to ask for that extension. This Board would have to grant him a further extension.

Mr. Harter – But would it just be an extension?

Mr. McAdoo – Yes, as I understand it, it would be an extension. As long as there are no new factors to it, it's just a time extension from the Zoning Board.

Mr. Nearpass – Wouldn't that be only if the Code Enforcement Officer deemed there was no significant progress? (Correct) I worry we are over regulating this a little bit. In your opinion, we pass this, we don't add any conditions, what would the Code Enforcement Officer say is meaningful progress?

Mr. McAdoo – We tie everything with building permits. If he puts in a building permit application that's approved, that's meaningful progress. The building permits are only good for one year anyway. If it expired without starting, which is six months, then that would be that he just did a paper attempt, but if he actually started construction, that would be meaningful.

Chairman Maier – I was trying to give parameters for the future Board and for Sean and for the applicant to say... How long is the building permit good for?

Mr. McAdoo – Good for one year plus a year of extension.

Chairman Maier – So there is a big window, and this is new, this (Code) is just six months old, nine months old.

Mr. Kumpf – My game plan is to build as soon as possible. Frankly, I need a place to live.

Chairman Maier – It's to help everybody and to try and make things clearer.

Mr. Nearpass – In twelve months, though, he doesn't have to show us the building permit. He has to show Sean a building permit, he doesn't come in front of us.

Chairman Maier – Let's say he gets the permit but he says I can't do anything for another six months, at least Sean can say he's making meaningful progress. We've helped define the parameters.

Mr. Nearpass – So I understand this, once he gets his building permit, let's say in ten months you get the building permit, after the 12 months go by, you're going say significant progress has been made, good to go. You don't wait another 12 months, it's not an annual renewal process? It's free and clear, it's evergreen, right?

Mr. McAdoo – No, once he gets his Certificate of Occupancy then the variance stands.

Mr. Nearpass – I think we have given him good guidance, it's good for 12 months, if it has to go past 12 months, Sean's going to expect to see a building permit, by then...

Mr. Kumpf – Hopefully it's not going to take that long to sell my house, I hope.

Mr. Harter – I think the discussion has been informational and educational to the applicant and hopefully he'll be able to use that information so that he doesn't have to come back and see us.

Chairman Maier – OK, so we have no conditions then.

Chairman Maier opened up the hearing to the public.

Jerry Rampe addressed the Board.

Mr. Rampe – I live right across from Rudy's house. We own quite a stretch of property. We're the only ones who can possibly see that barn, *you can only see it from our property*. I've got no problems whatsoever with what he wants to do. Victor was a farming community with barns; it's part of the fabric of the community. Especially on that road, it's a speedway anyway, it's not like it's in the middle of a housing development. I would hope that you would grant the variance for him. That's all I have to say.

Chairman Maier read the resolution.

**RESOLUTION:**

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on June 28, 2016 from Rudy Kumpf of 670 County Road 9, Victor, NY 14564, who proposes to subdivide his lot which would leave a barn as the only structure on a single lot, whereas, §211-

19A(3) of the Town of Victor Code states accessory structures that are clearly subordinate to a principal building are a permitted use in residential districts; and,

WHEREAS, said application was referred by Sean McAdoo, 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 July 10, 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 July 18, 2016 at which time one resident spoke for the application and two letters were 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 allow an accessory structure to stand alone on a lot without a principal building at 670 County Road 9, 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: It is a residentially zoned district, there are homes in the vicinity. The barn is pre-existing. It has been there 35 years.

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: If the variance is not approved, the parcel cannot be subdivided; a house cannot be built without removing the barn and then replacing the barn. That would most likely be a financial burden.

3. The requested area variance is not substantial.

Justification: Again, the barn has been there a substantial amount of time and the desired lot subdivision cannot be achieved by any other practical method.

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

Justification: The barn is pre-existing and has been there for an extensive amount of time. It is a residentially zoned area and there are houses in close proximity to the proposed lot. The applicant has stated that he can construct a house that will be compliant with the zoning regulations and will not need to revisit the Board for a variance relative to that action. The action of building a home will eliminate the need for this variance.

5. The alleged difficulty is self-created. This consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

On motion made by Keith Maier, seconded by Donna Morley:

NOW, THEREFORE BE IT RESOLVED that the application of Rudy Kumpf, 670 County Road 9, Victor, NY 14564, requesting to allow a barn as the only structure on a single lot, whereas, §211-19A(3) of the Town of Victor Code states accessory structures that are clearly subordinate to a principal building are a permitted use in residential districts BE APPROVED:

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

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

Adopted 4 Ayes, 0 Nays

**GORBEL – SIGNS (Area Variance)**

600 Fishers Run

Appl. No. 17-Z-16

Applicant is requesting to place two monument signs within the Gorbel campus 18 feet from the right-of-way, whereas §165-4B(6) states that no free standing sign shall be closer than 35 feet from the pavement of the public right-of-way.

The secretary read the legal notice as it was published in The Daily Messenger on July 10, 2016.

Josh Palmer from Vital Signs of Webster addressed the Board.

Mr. Palmer – I do have some revised drawings. The ones that were submitted, the logos were bigger than we actually intend to do them so if I can come up and pass these out. Also included in this are some photographs showing the point at which the photograph was taken from above and the photograph itself showing the angle just to display where the signs would end up if we had to follow the exact Code. Some of these end up under trees or so far out of the line of sight at 35 feet that they would be ineffective.

So what I intend to do is redefine these as monument signs. Last time that we talked, we were looking at them as directional. We want to redefine them as monument, but once we redefine them as monument, the Code says that they have to be 35 feet from the easement.

In the two pictures, shown from above, where the letter A or the letter B is, that's the angle at which they were taken. Going forward, if you look at street view A, you're looking right at a tree in the center of that picture. That sign at 35 feet actually ends up under that tree. That's why we want to move it to 18 feet from the easement. If you flip that page, right in the back of that page you will see a marking at 35 feet showing you exactly where that ends up and then another marking showing 18 feet, where the sign is suggested.

Mr. Harter – Where are you measuring the 18 feet from?

Mr. Palmer – Right from the edge of the road.

Mr. Harter – Is that correct Sean that they measure from the edge of the road?

Mr. McAdoo – Yes, it's from the pavement edge.

Mr. Nearpass – For a monument sign, did we grant a variance before to let them have the logo on there or no?

Mr. McAdoo – There was an application several months ago about this. You are recalling that there was one monument sign that they had agreed upon doing, the rest were going to be directionals. That was across the street in the other building. This was the Cleveland Terminal across the way, not the main building. It does sound familiar it's just going back and they put a separate application in.

Mr. Palmer – We were told not to have logos on these two signs. The problem is ...

Mr. Nearpass – Would you need a variance, as well, for the logo?

Mr. Palmer – No, because before we were asking for wayfinding signs. We were told the logo didn't need to be on the wayfinding signs and so it wasn't a location issue, it was an issue of, we were going to be granted the wayfinding signs and not allowed to have the logos on it because

they didn't need to be on the wayfinding signs. We want to redefine them as monument signs advertising the business and branding for the business, which happens to include the wayfinding.

Mr. Nearpass – I'm looking at the Code and I just read, I thought the monument sign couldn't have the business name....

Mr. Palmer – That's what a monument sign is.

Mr. McAdoo – Correct, a monument sign has the name of the plaza or building, not the business name. A single source one like this, we've also had the past standing that if that is the only business, that's the name of the building.

Mr. Nearpass – So you don't think they need a variance for that?

Mr. McAdoo – Right, for example you heard me define, the Cleveland Terminal, that's what they called this building that we are actually dealing with in the bottom of the picture. If they said Cleveland Terminal, you'd see me reference saying, OK wait, now you're talking about a tenant, it's a sub piece of Gorbel. In this case Gorbel is just the name of the building.

Mr. Palmer – The other thing I'd like to note, if you look at the picture for street view A, you can clearly see at that angle that you can see no building. There is no way to see that Gorbel is that building. If there is just a sign that says shipping and receiving, there are other businesses, there is a daycare and there is an architectural firm in there; it doesn't clearly say which business is marked. If there are any truckers at night trying to make deliveries, they are having issues with them going in the wrong way, backing up, going in reverse down the street. It creates a clear safety issue for parents picking up children; people coming in and out of the architectural firm and even firm employees and visitors to Gorbel. I think the point is that we need clear direction showing not to pull into one for shipping and receiving, to go to the next entrance down, the second curb cut, and then there clear instructions that this is still Gorbel and to pull in at this point. There is no through traffic, at that point, past there. The real issue is people not getting to the right curb cut, or going into wrong entrances and backing out trucks.

Mr. Nearpass – I'm OK with it. I think they presented enough evidence that shows that it probably wouldn't make logical sense to put it under the tree. You could probably also move it laterally, to get around it. I think it's reasonable. It's substantial, but I think reasonable in this case. I'm OK with it. I remember that you were in front of us before and I understand the issue with the trucks.

Mr. Palmer – We walked around the campus to make sure putting it where we proposed presents no issue with people trying to pull back out into traffic. It's not blocking their line of sight so

they can't see traffic coming. There is no real detractor by having the signs there. It only creates a benefit for safety and for clear directions for incoming deliveries and traffic.

Ms. Morley – These are the signs (images) you are talking about putting out there? (yes)

Mr. Harter – How many signs did we approve originally?

Mr. Palmer – You approved four. The others are already approved. They are so far, they are actually much farther than 35 feet off the setback. They are within the campus; they have already been approved. These were the two signs for building 593 that were approved as wayfinding but without logos. Like I said though, the problem is, that building has, with the way the trees are set up, there is no way to tell where you are, if you are at a Gorbel building.

Mr. Harter – Of the four signs that were originally approved this is a redo of two of the four?

Mr. Palmer – Yes.

Mr. Harter – So we are not approving two additional signs?

Mr. Palmer – No. We are not adding any signage. We are just trying to redefine what two of the previous signs were.

Mr. Harter – I think Al mentioned to us that at the end of the road here there is one additional parcel that you don't own.

Mr. Palmer – It's undeveloped at this point but I believe there is a farther parcel at that point too.

Mr. Harter – You folks don't own it?

Mr. McAdoo – No, they don't.

Christina Green from Gorbel addressed the Board.

Ms. Green – I work for Gorbel. That parcel is actually owned by Heritage Packing. The Gentleman's name is Bill Smith. He owns that property; it's actually up for sale right now. He does have approval to put a building up. So as soon as that parcel gets sold they can start developing it as another business.

Mr. Nearpass – It'll just get tricky when they want to have signage.

Mr. Palmer – But it will even present more of a case that we have to have clearly defined signage for what we have so that trucks don't continue on past looking for Gorbel.

Mr. Harter – I think my questions have been answered, thank you.

Chairman Maier – How many trucks a day come into that campus for Gorbel?

Ms. Green – There are 15 to 20 trucks daily.

Chairman Maier – And these are tractor trailers?

Ms. Green – Yes, 18 wheelers or delivery trucks, UPS, FedEx. We have shipments and we receive multiple, maybe four to five shipments of steel a day. So they are pretty heavy loads that are coming in. Especially for travelling to the 593 building, we definitely don't want to create a hazard or safety issues with trucks tipping over with heavy loads on them. That doesn't include visitors.

Chairman Maier – This particular building, which would be on the South, which we are addressing with these signs, how many trucks a day come into that building?

Ms. Green – I would say probably seven.

Chairman Maier – Of those that come into the campus each day, how many end up going in the wrong spot.

Ms. Green – I would say maybe half. It just depends on if it's a truck driver that has been there before. We've had issues with truck drivers going to wrong buildings before. We see miscellaneous packages in wrong buildings and we have to physically take them to the next one or use our forklifts to deliver. It is a known concern with all four of the buildings right now.

Chairman Maier – When you give them an address to punch into their GPS, what address do you give them?

Ms. Green – Usually it's the building number itself.

Chairman Maier – So this sign that we have here, would be a building number?

Ms. Green – That is correct.

Chairman Maier – So each building has a building number, so if they punched in the 593 and you had a sign that showed 593 shipping receiving, would they be able to find 593 shipping and receiving with the information that you gave them.

Ms. Green – I would say yes.

Mr. Palmer – My GPS, when I showed up there, it just told me as I pulled in between the buildings, told me I was at my location and I had yet to pull into any building.

Chairman Maier – I wasn't in there for this application, but I was in there. I can understand the one building to the northeast could be very problematic. The question I have as a truck driver, if I see a 593, you have Gorbels signs out there now that are labeled Gorbels.

Mr. Palmer – There are none out there.

Chairman Maier – So these are the two big ones? The two larger ones...

Mr. Palmer – No. The two larger ones are set back only to the curb cuts for the 600 and 610, those two buildings. They are set back the 35 feet.

Ms. Green – Currently there are no existing directional signs.

Chairman Maier – Again, where I'm going with this is, is this just a question of marketing or a question of just providing directions. That's what I'm trying to figure out. Can we provide directions without marketing.

Ms. Green – I see it as providing directions and confirmation that you are going to Gorbels' building.

Chairman Maier – I'm kind of on the fence. I'm trying to figure out whether there is another way to accomplish this without going with these larger signs. Accomplishing it with what we originally approved because we raised these questions before.

Mr. Palmer – If they are not using GPS, how can they be positive that building is Gorbels without it saying Gorbels.

Chairman Maier – I knew when I went in there. I knew Phillips Road. I knew when I got in there where Gorbels was. A lot of times I've been in these parks and if you put a 593 on the building, I would know that 593 is the place I want to go. I know GPS' get kind of squirrely sometimes and

that's what I'm trying to figure out. Is the Gorbel marketing necessary with what the Town is trying to accomplish with their sign policy?

Mr. Nearpass – The sign policy allows them to have a name there, so they don't need a variance for that.

Chairman Maier – Which they already have.

Mr. Nearpass – They don't need the variance to say Gorbel, that's what we're talking..

Chairman Maier – I understand that, the variance is now for the setback. We approved this and it seemed to be OK, now we are back here again. What we approved, the reason we approved it, was we were trying to limit the marketing, if I understood things correctly, and so provide you with appropriate signage for the safety and now we're back. What we approved the first time wasn't good and we want to do this again.

Mr. Palmer – Isn't each building considered a separate entity though? If you had five Dunkin Donuts on a road, which there probably is someplace, would one of them be allowed the sign and the rest you have to guess? They are all separate entities.

Chairman Maier – I think the intent, my understanding is the intent of the new sign Code is that when you go into a business park you certainly want to make it easy for people to identify where they are going. Sometimes it's a number on a building, it's that easy, you look at the building and you know where you have to go. What they are trying to do is minimize a lot of signs and you raised the issue when you came in. You said so and so did this, so and so did this, etc. What happens is we have a lot of people that have done this and from the perspective of the residents of the Town it's not as attractive as they would like it to be. I'm asking for evidence to say that this is the only.... I don't want it to be something that you want. I would like you to convince me a little bit better that it is something that you need. That's where I'm going with it.

Mr. Palmer – The only argument that I can make is that it's hard for me to see any detractor to having this, all I can see is that it can only add more safety and clear direction. It can only do a positive thing in that area. There is really no negative impact.

Mr. Nearpass – The only confusing thing I see, that has potential, and it may not be your issue, when another building goes back there and it's called "XYZ" corporation.

Mr. Palmer – They only have one more lot they can develop, so they can't have multiple building signs.

Mr. Nearpass – So, where is their sign? How do you get back there? You are going to have to direct people to the Gorbels business park? I'm going to look at Sean? When the other building goes back there and it's XYZ Corporation the Gorbels Monument sign, the Code doesn't allow the other corporation to put a monument sign out front.

Mr. Palmer – They are a separate parcel, right, so they would have a separate curb cut and a separate building.

Mr. Nearpass – I'm going to look to Sean, because it's the same office park.

Mr. McAdoo – It's the same office park.

Mr. Nearpass – Another parcel can't put a sign for their parcel on another lot.

Mr. McAdoo – They would be allowed a monument sign that identifies the White Building, we'll call it.

Mr. Nearpass – On their parcel.

Mr. McAdoo – On their parcel. As you are coming down the road, and in this case, Gorbels has three separate taxing parcels which Al and I have talked extensively about it and we agree that each building is its own entity because they could theoretically sell one building off to someone else, so it should stand on its own. As you come down the street, you have three Gorbels buildings on the right, one on the left, and then straight ahead would be the Heritage Packaging owner. They would have a sign, theoretically, right there at the end because that road dead ends into their access point.

Chairman Maier – How big is that parcel Sean, do we know?

Mr. McAdoo – For Heritage? They haven't designed it yet.

Chairman Maier – One acre, five acres?

Mr. McAdoo – It's several acres, I'm sure it's five or more. They could split it, extend the road, they could probably subdivide. There are some kettles in the back corner, but you can say conceivably you could put two buildings easily of the same size here and maybe a third, depending on how well the engineering is.

Ms. Green – I just think for the years Gorbels has not had clear signage and having four buildings that are occupied by so many people, I think it's clear and it's time to make the messaging clear

for our truck drivers. Tomorrow we have about 15 of our distributors coming in to Gorbel and they are supposed to be going to this one location so as far as the GPS, you're there, but there are four buildings to choose from. I think it's just finally time for Gorbel to clearly indicate which building you're at.

Chairman Maier – I appreciate what you are saying. I think we probably hear it a lot.

Mr. Nearpass – The variance today is really about the distance. It's not about the name. I think we are getting in the weeds a little bit.

Mr. Harter – Our original variance that was granted to you for the four signs, and we're still keeping four signs. You wish to change two of the four to this. When we gave you the approval originally, do we not identify where the signs were going? How did we leave it before?

Mr. Palmer – We met with two people, I believe the highway department. We marked off areas and we established that's where the signs were going to be. At that time because they were wayfinding signs we were allowed to be at 18 feet. That solution just wasn't acceptable to the people at Gorbel as far as what they thought they needed. We came back, we are redefining them as monument signs with directions. It is consistent with other signage in that area for other businesses which have much larger signage.

Mr. Nearpass – The other two signs are directional?

Mr. Palmer – All the signs are directional of some sort.

Mr. Nearpass – But the other two are purely directional, not monument.

Chairman Maier – They are all monument.

Mr. Palmer – They are for 35 feet (setback) and they are for separate buildings.

Chairman Maier – We approved two of the smaller and what they are requesting is to go with the larger signs and move them back....

Mr. Palmer – Actually they are the same size. We haven't sized them up at all from what was approved. They are still three feet by three feet.

Mr. McAdoo – The original letter from May is in your packets. One of the conditions was giving the size and that only one sign would have the Gorbel logo, the other three signs will not have the Gorbel logo at the bottom of the sign. The other condition was that the Highway

Superintendent shall approve the location of the signs on the campus. Those were what you were thinking of.

Chairman Maier – We also defined dimensions for the smaller signs.

Mr. Palmer – We kept those dimensions. We originally proposed four feet high by three feet wide, the panels themselves. We were asked to bring them down to three feet by three feet. We haven't changed that. We're not asking for an increase in size.

Mr. Harter – So what is before us is not so much the signage but the position of the signs.

Mr. Nearpass – The signs aren't directional signs, they are now monument signs. Why the change again?

Mr. Palmer – Just to try to work out a way to have these in the position we want them and with the clear message.

Mr. Nearpass – If they stayed directional signs, you just wouldn't be able to have the logo.

Mr. Palmer – You wouldn't be able to have the logo, it really doesn't direct them, it just says shipping and receiving for anybody.

Mr. Nearpass – Well, if it said building 593.

Mr. Palmer – It still doesn't say... I mean there are 20 buildings in that complex, and like you said, more to come beyond that. At some point, if there are more beyond that, those trucks aren't going to know they are in the wrong place until they are beyond that. We're going to have more issues than we have now.

Mr. Nearpass- OK, I'm still good.

Chairman Maier asked if anyone from the public would speak. No one spoke for or against the application.

Chairman Maier – We have heard from Ontario County. Have you read Ontario County's comments?

Mr. Palmer – I read it the first time saying about the I-90 corridor. There are no tourists. If they are in that area then they will be happy we put good signs telling them they are in the wrong place because it's far away from wine country.

Chairman Maier – Let me read Ontario County’s comments. The referral recommendation is denial. They’ve taken an interest in supporting local efforts to limit excessive signage. The Board has identified Route 90 as a primary travel corridor for tourists visiting Ontario County. The intent is to protect the character of development along these corridors by encouraging local Boards to adhere to their adopted laws as much as possible. All applications for a sign located on property adjoining primary travel corridors that do not comply with local limits on size and/or number. Final classification is class 2, the proposed sign is on land along the corridor identified by the Board as 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 the specified site. It is the position of this Board that the signage is excessive. Excessive signage has a negative impact on the community character and their recommendation, again, is denial.

Chairman Maier read the resolution.

**RESOLUTION:**

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on July 5, 2016 from Gorbel Inc., 600 Fishers Run, Fishers, NY 14453 requesting to place two monument signs within the Gorbel campus 18 feet from the right-of-way, whereas §165-4B(6) states that no free standing sign shall be closer than 35feet from the pavement of the public right-of-way; and,

WHEREAS, said application was referred by Sean McAdoo, 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 July 10, 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 July 14, 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 July 18, 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 to allow the placement of two monument signs within the Gorbel campus 18 feet from the right-of-way:

1. An undesirable change would not be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

Justification: The Gorbel campus is an isolated, somewhat remote area that is not highly traveled by passenger vehicles or tourists as Ontario County Planning Board might think. The signs would not be visible from the Interstate Route 90 corridor.

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 shrubbery in the area makes the setback request a requirement in order to make the signs visible. There is a moderate amount of tractor-trailer traffic and it has posed or could pose a safety issue.

3. The requested area variance is not substantial.

Justification: The size of the signs was previously approved. The setback is needed to make the signs visible.

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

Justification: The campus area is not part of the Route 96/Route 251 corridor; it is not visible from the Route 96/Route 251 corridor and the signs are not visible from Interstate Route 90.

5. The alleged difficulty is self-created. This consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

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

NOW, THEREFORE BE IT RESOLVED that the application of Gorbel Inc. 600 Fishers Run, Victor, NY 14564, to allow the placement of two monument signs within the Gorbel campus 18 feet from the right-of-way, whereas §165-4B(6) states that no free standing sign shall be closer than 35feet from the pavement of the public right-of-way BE APPROVED:

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

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

Adopted 4 Ayes, 0 Nays

**SCOUT CROSSING – FRONTAGE (Area Variance)**

Dryer Road – Empty Lot

Appl. No. 18-Z-16

Applicant is proposing a four lot subdivision and is requesting to allow three lots with 30 feet of frontage and one lot with 34 feet of frontage, whereas Schedule II, Area and Height Requirements requires 100 feet frontage per each lot.

The secretary read the legal notice as it was published in The Daily Messenger on July 10, 2016.

Scott DeHollander of 7346 Dryer Road addressed the Board. Mr. DeHollander gave handouts of what he is proposing to do to the Board members.

Mr. DeHollander – We are very early in our preparation of plans for this project, but we did have an informal meeting with the Town Planning Board several weeks back. We discussed what our proposal is and what we feel is the highest and best use of the property that we intend to develop.

It is a 9.8 acre parcel located on Dryer Road. One of the challenges that we are faced with this development is its available road frontage. While it is a very large lot, 9.8 acres, it has only 124 feet, plus or minus, of frontage available to it. What we are faced with is how best to balance the infrastructure associated with accessing those lots and the density that we feel is the highest and best use of that land. Also trying hard to follow what we feel is the most substantial guiding element of the zoning overlay district, meaning our lot sizes, not less than the two acre overlay requirement. Using that math you see there is a lot yield of less than five, because we don't have 10 acres to work with, we only have 9.8, almost five.

We approached the Planning Board with that question. Shall we pursue a dedicated road to access the internal portion of the lot, and there are some disadvantages to that I believe justify our variance request. I'll get into those in a little bit more into my presentation. Or should we try to utilize the private roadway that is provided in the Zoning Code Section 211-12, I think, are the definitions but it defines a private roadway as one that access' less than four lots. There isn't a sketch or a definition of what the minimum section looks like for a private road but we did have some preliminary conversations with the Planning Board about that. We believe there is a substantial impact difference in width when you compare a private road to a dedicated road impact at the entrance.

I presented the photo that is taken opposite of where our proposed access point would be. To give you some idea as to what the existing frontage looks like, it's heavily wooded with some mature trees. I think one of our, as equally substantial guiding intentions in this development, is to preserve the existing trees and definitely the buffer around the project with the adjacent neighborhoods on Surrey Lane and Hunters Run. The impact of the road is significant to us. On the sketch I've used a hatch, a darker area, that circles our access driveway and what would ultimately be a cul-de-sac. This is how we are proposing to access these four lots. It would be a single driveway shared by four or all of the houses. It would have a road width of about 20 feet and a cul-de-sac that all the driveways would access off. It's not significantly different than the dedicated road with the exception that the extra impact is highlighted by that hatch or darker area. You can see it's an 80 foot width versus a 40 width at the intersection with Dryer Road.

Our request is based on an attempt to really minimize that road frontage and balance the infrastructure with the lot yield.

Mr. Nearpass – Scott, so what exactly does the highlighted area indicate?

Mr. DeHollander – The extra width that would be impacted, the clearing if you will that would be associated with a dedicated road.

Mr. Nearpass – A dedicated road, not a private road.

Mr. DeHollander – The private road is the area in between. (the one inside it)

The dedicated road right-of-way width, including the 10 foot easements on either side is a clearing width of 80 feet. We believe that we would be able to have a much narrower impact at the road frontage of only 40 feet with the private roadway.

With that explanation of what our proposal is and what our variance is, I have a couple of justifications for your consideration. We don't believe that there is a detriment to any of the properties or to the neighborhood. Our intention is to create an access road that is very consistent with other dedicated roads. It will function seamlessly with the exception that its intersection would be more private and protect the existing wooded lot at the intersection.

I point out that utilizing the 124 feet that's available at our frontage is 1.55 times greater than the 80 foot right-of-way width that would be required if it were a dedicated road. There is more frontage without a house on it, if you will, with this private road configuration than if it was a dedicated road.

The disturbance at the frontage, I think I already mentioned this, is one half that of the dedicated road option. The private road will operate and feel just like the adjacent access roads that surround our project on Dryer Road. I should also highlight a little bit from the Planning Board meeting that we informally present at. We found that there was support for our proposal at the Planning Board. I do believe that they would represent that this was the preferred option because of its preservation of privacy and to minimize the impact on the frontage. We were

careful to choose a location for our access driveway that did not align opposite a neighbor across the street so that there wouldn't be a concentration of headlights or impacts across the street. Our location is offset and in an area where existing screening is well developed.

I think relative to the second point there really isn't another way to achieve this benefit. One of our principal design considerations is to comply with the overlay requirement for lot yield and we would not push for five lots, rather settle on four and utilize the infrastructure that the Town Code allows for four lots, which is this private road configuration, and ask for permission for relief that is really mitigated at a rate that's one and half times greater than what would be provided if we had provided a dedicated road. I would also highlight that a dedicated road would require significantly more infrastructure as well that it might not be fully utilized by such a small, modest development, sidewalks, gutters and such. Green infrastructure techniques of open swales and footpaths might be more appropriate.

We also had the opportunity to meet with the Conservation Board and found that they also supported a minimized development approach. I would just highlight that our cul-de-sac, if this were a dedicated road configuration, would provide adequate frontage for five lots.

Ms. Morley – When you said you were looking at the impact of the driveway across the road, it looks like it's directly across from the driveway.

Mr. DeHollander – The driveway is offset slightly and there is a grade and a stand of existing trees that don't perfectly line up. It's offset. It is not directly across. Do you have a photo that shows it differently than I'm representing it? Is it just hand drawn?

Mr. Hollander saw the images and explained that the goal was to offset the driveway.

Mr. DeHollander – There is some flexibility in this frontage if this were to slide to the right we could further separate it.

Relative to the third question, if the variance is substantial, we do recognize that we are asking for greater than 50 percent of the relief here. We have an opportunity with our project that I would like to highlight on this handout that I passed around at the beginning of my presentation. We are pursuing a land swap with the neighbor at 7532 Dryer Road, Paul Kane. His lot is oddly configured, kind of in the shape of an L. He has a very small backyard. We are pursuing and would follow through as a condition of variance approval, certainly as a condition of Planning Board approval, that land swap such that our frontage would increase to a 50 foot minimum for each lot and giving him a backyard substantially bigger than what he has now, of about 160 feet, whereas he has less than 20 feet now. So we have an option for correcting a substantial impact and correcting a substandard rear lot of an adjoining property.

Relative to adverse impacts on physical or environmental conditions. I think I can answer that with just one statement and that is our goal is to have a very private and low impact development. We chose less density, a smaller footprint, at every turn.

If there are any questions I can answer, I will be happy to answer them right now.

Ms. Morley said she was Ok at the moment when sked for questions.

Mr. Nearpass – Looking at the Planning Board minutes, there was some debate over the quality of the roads, to what standard the roads were going to be built to with 20 feet, 24 feet, emergency vehicle access and those kind of things. Can you talk to that a little bit?

Mr. DeHollander – Yes. The goal is to not use this as a tool to cheapen the infrastructure. It is rather a tool to match it to the density that we are proposing. I made statements to the effect that we would make sure that we develop this section with the Town Engineer and with the Planning Board that everyone was comfortable with relative to emergency vehicles and certainly access. We want it to function and feel safe but at the appropriate width.

Mr. Nearpass – So it will be sufficient such that if in 10 or 20 years' time the residents did decide to dedicate it to the Town, and the Town was willing, would it be of the quality that the Town would accept? Would it meet the Town standards as in section 211-148?

Mr. DeHollander – There was some talk about that. I think the Code does have a process for taking private roads, but we intend to put in place the appropriate private maintenance agreements so that the road would not need to be dedicated in the future. That would be an option, but it would likely require a widening.

Mr. Nearpass – I'm more concerned about the quality of the road than the width. One of the debates had to do with one is 20 feet versus 24 feet. What width are you going for with the driveway?

Mr. DeHollander – The private driveway, which is defined in the Design Criteria, has an eight foot lane width either side of center and a two foot shoulder. I think that is a starting point. We would be looking at what the local road widths are, I don't know exactly what they are, but they are slightly wider than that. We would be trying to find the appropriate balance between the two. It may be the full local road section.

M. McAdoo – The Design and Construction Standards spell out, in this case, what they do. They will be made to hold up to the requirements for the fire service and the emergency services. That's a point that is already put in Code.

Mr. Nearpass – I'm OK for now.

Chairman Maier – Refresh my memory. Really what we are talking about is a parkway road. What's the difference between a parkway road and the private road? My experience with a guttered road is the advantage of the guttered road is that you can go narrower because you don't have to deal with the runoff from the road. Help me understand how we go from a guttered road to the private road and deal with the width issue, just so I understand it.

Mr. DeHollander – I think most of it is really just driven by the road section as defined in the Code. The Code is very specific. We were looking at a dedicated road that was un-guttered. I think alternate B local road is an un-guttered road.

Chairman Maier – So a guttered road was never under consideration with the Planning Board?

Mr. DeHollander – I don't think it's necessary in this case because we do have techniques to address weepage and underdrainage and making sure that we have positive drainage. Drainage is one of the larger concerns that we had in conversations with the Planning Board, really unrelated to the frontage. It will be an issue that we look at closely through the development of the project. I wouldn't say that gutters, we weren't trying to eliminate gutters from the project, we were really just trying to put in place the right infrastructure. There is a good case, whether it's a private road or a dedicated road, to install gutters on the high side of the road. We do have grade that crosses our section and we would be well served to have gutter on the high side, but maybe not on the other side where we would tend to use that area for infiltration and water quality.

Chairman Maier – One of the things we are going to discuss is I think we have two options, we may have more than two options, my understanding is that Sean, if it was a dedicated road, they wouldn't need a variance?

Mr. McAdoo – If this became a dedicated road, frontage as such, it wouldn't need a variance if designed as shown here.

Chairman Maier – One of the questions to the Board tonight is at this point there is no hardship. One of the issues is, we don't have..., I'm looking at the topography. We don't address that, the Planning Board addresses that and so the dilemma we have is that right now you can develop this without the variance. Under the Town Code you can develop this without the variance. There is really no hardship. We don't know yet, we can assume the Planning Board might go a certain direction but we don't know what direction the Planning Board is going to go yet. One of the things I'm going to pose to the Board, is do we want to, how do we want to deal with this because we don't have a hardship so to speak. Do we want to approve something that may be changed in the future? One of the questions I have is that my understanding, and that's why I wanted to see what the Planning Board said, is that there is less impact with a guttered road than there is with what we would call a parkway road or a private drive. I appreciate the fact that you

are saying you want to minimize the impact but when you start doing the design you might find that you have a wet area or you need to handle runoff. If we do make a decision, we should make sure that we have the information so that we are going to accomplish what I think we all want to accomplish. Am I wrong about the guttered roads? Not that I'm pushing them, but do we go narrower with a guttered road?

Mr. DeHollander – I think you are spot on. I think it's a tool in the tool box and we just need to make sure that we are balancing water quality and positive drainage. I'm excited about finding a path forward so we can work between the Planning Board and the Zoning Board. I'm not pushing for any decision, really just an opportunity to work towards this until we reach a point where either we don't need a variance and we go dedicated or....

Chairman Maier – That was the point and I appreciate what they do and I don't want to give the implication, we may or may not approve it tonight, or I don't know how we're going to move forward with this, to approve it and give the indication that that's the way we wanted to go without.....

Mr. Nearpass – We're not approving a road today, right today is just the frontage. They need that anyway, right? They could go with a dedicated road.

Chairman Maier – No, they can go with a dedicated road and not need a variance.

Mr. Nearpass – They wouldn't need the 100 feet of frontage per lot.

Chairman Maier – No.

Mr. McAdoo – If you put in a dedicated road then the dedicated road would provide sufficient frontage because the cul-de-sac allows it to be less.

Chairman Maier – I appreciate what you are doing and the fact that you went to the Planning Board with concept I think is great. I appreciate that and I'm sure they did too. Right now I'm just trying to get my head around how it's really going to turn out.

Mr. DeHollander – I can tell you there was a significant design effort. The checklist that the Planning Board requires, requires very specific presentation of what you are proposing. I will be detailing and proposing a private road initially. They may push me back to the Zoning Board for a variance, would I have a hardship at that point?

Chairman Maier – You certainly could prove a hardship if the Planning Board said that this is really the direction that we want you to go, then we've got something more concrete to say the

engineer's looked at it, the Conservation Board has looked at it, the Planning Board has looked at it in more detail and this is the most appropriate way to deal with this. That certainly would add value to the decision.

Mr. Harter – As a practicing engineer I've dealt with a lot of flag lots in my time and I've dealt with flag lots in the Town of Victor as well. I think a piece of information that hasn't been put out there in this discussion, and I don't even know if Sean is aware of it, but we had with Valentown acres a very similar project on Valentown Road with an almost identical situation. There was an opinion that was rendered by the Town Attorney, David Hou, based on Highway Law section 280 I believe. David's opinion was that a private access easement coming off of a public highway creates a de facto right-of-way and that we as a Board could consider that private access easement as a public highway for the purpose of the application before us. That has also been used for other applications such as Fred Salzburg on Cork Road. We have a precedent set in the Town of Victor and I think that precedent is important to mention to this particular project because I think it has direct bearing on it. I agree that there may not be a hardship per se, but I think there is a practical component to this that says that this is such a short stub that is being proposed here, 300 or 400 feet, that most towns and villages don't want that road as a public highway anyway because it's a nuisance to keep track of. The one kicker always with flag lots is that if you have a private access and utility easement that covers the area and it's executed properly and it's filed in the County Clerk's office; if that's all done then you generally have no problems. If that gets dropped somewhere along the line, and I think I've seen that in the industry, it creates a Hatfield and McCoy situation.

It's my opinion that what is being proposed here is acceptable based on past applications that we've had of a similar variety. There is a common sense approach by considering a private access and utility easement as a right-of-way. I also think that when you do a project like this, with the flag poles and the flag lots, that you take a piece of property, that by observation complies with all the other zoning restrictions such as area, side setback, leach field areas, and that sort of thing, the reality is the only limiting factor is an item in our Code that is probably due to be revised based on David's interpretation, and that's causing quite a bit of administrative effort as I see it. It's my opinion that we should treat this application as we treated Valentown Acres and Fred Salzburg and probably a couple of others that I can't think of at the moment, that it is most practical to proceed this way and allow the applicant to deal with the Planning Board on whatever road size, road width, whatever is correct. I think that is more of a Planning Board issue than a Zoning Board issue. That's how I see it.

Chairman Maier – The applications that you mentioned, Valentown and the others, was the only option a variance or did they have the option of doing a dedicated road?

Mr. Harter – Every project like that has the option of putting in a dedicated road. Probably many engineers who look at that aren't initially or for any reason in favor of that, a short stub. If there

were additional lots, as the applicant said, if there was the need for greater, heavy duty infrastructure it would make sense to do that. You can always put in a dedicated road. It's not the initial first choice and it's not a practical choice for a subdivision of this particular size.

Mr. McAdoo – I did check because I was aware of what you are talking about. I did check with the Highway Superintendent. He brought up to me that Esjay drive is not much longer than this proposed road. He is aware of that, he and I had the conversation before I made my comments, I said if he had an opinion either way, I could bring it to the Zoning Board. He was fine either way because of the Esjay Drive precedent and the ones you mentioned, that either way would be fine with him.

Mr. Harter – It would be my proposal that we grant the variance based on the precedent being set and David Hou's interpretation. It can be retrieved from the previous applications and added to this one and allow the applicant either to, with the Planning Board, to either go for a dedicated road or to take that option with respect to whatever the pavement sections or the utilities may be. Although I think it's generous to want to come and see us and everything, that's nice, most applicants don't like to go back and forth with us. They like to get their projects consolidated and out there. I think, having been in your shoes, I would like to see you get sent on your way as we've sent the others on their way with a clear option in what you can do here. I don't think we're compromising any environmental or physical or any other factors that we are supposed to consider for this variance. I think because of David's interpretation we really need to revise our Code is what I think relative to flag lots.

Mr. DeHollander – Thanks Scott. I wasn't aware that that heavy lifting had already been done, but I was prepared to do it if that was necessary.

Mr. Nearpass – As usual on these matters, Scott brings a lot of good information that kind of grounds our opinions. I think that that made perfect sense.

Ms. Morley agreed.

Chairman Maier opened the hearing to the public.

John Maloney of 1225 Hunters Run addressed the Board.

Mr. Maloney – Good evening. I want to apologize for my phone going off earlier. If you could go back to the first picture that was put up there. Again, I've heard a lot of talk and maybe I should be in front of the Planning Board. (That's OK)

I hear a lot of talk about helping the environment and taking a look at the runoff. My house is right here so I am definitely effected by this development. (Pointing to image) This used

to be woods, now we have a development. This used to be open, now we have a development. This is one of our last kind of wooded areas, very pretty, a lot of wildlife back there. It's like the last refuge that we have in our neighborhood and it's very sad to see it go. It's part of the reason why we moved there, it's part of the reason why a lot of people have moved to Victor because of areas like this. I understand, I've never met the developer before, I'm sure he's a wonderful person and he has a family to pay bills for, but to me Victor is just a place where developers come and they look for land and they build stuff and move on to new lands or different towns. If you look at my little area, drive around where I am, there are houses going up, up, up like crazy. I'm very very worried with the runoff here. We get a lot of runoff in this back area. If you've ever walked back here, and I live back there, there is a big drop off and it's going to be a drainage issue. This is all hills and swales. The amount of dirt that is going to have to be moved. The amount of leveling; the amount of trees that will be taken down is unmatched. I don't know how you can squeeze it in. I don't know how you can level things. The surrounding area, the drainage of everything will be effected. My yard currently, when it rains, it's pretty bad and we have to deal with it and I'm afraid this will just exacerbate everything.

The five things that were covered tonight, and I understand the dedicated road and the non-dedicated road. Again, I think it's about saving money. I do think if it is going to be there, it should have gutters on it. I think they are more worried about the drainage in the front than the side properties. I also think that the developer talked about widening this and then giving the guy more backyard which I think would then make the problem with the opposite driveway worse, I'm not sure on that.

I just hope that the development and the overall changing of the grounds and the leveling of the hills... It's going to have to be done. I'd be surprised if anyone ever walked back there, but it seems like a really tough place to put four houses and to deal with the drainage, etc.

Mr. Harter – We appreciate those comments. Our charge tonight is relative to the access.

Mr. Maloney – The access road, if he gets the dedicated road, then none of this matters, correct?

Chairman Maier – Right. What we decide is not going to impact his ability to develop that property.

Mr. Maloney – But he has to go with the dedicated road then?

Chairman Maier – No.

Mr. Maloney – So is any variance required at all?

Chairman Maier – He is requesting a variance, yes.

Mr. Maloney – So that variance at a 100 foot minimum frontage for each house?

Chairman Maier – What he is attempting to do is minimize the impact on the road.

Mr. Maloney – Right, which is ironic to me because we're talking about lessening the impact and we're taking down all the trees and we're messing with the hills.

Chairman Maier – We don't have any control over that. He could walk out tonight and he could withdraw his application and then go back to the Planning Board and still do most of this. He may have to do it in a slightly different way but he could still do this. That's what we talked about before is that we had a choice to allow him to go to the Planning Board, let the Planning Board dictate what happens. If he required a variance, then come back to us, or we can grant the variance. Either way, under the Code as it stands he can develop these parcels.

Mr. Maloney – These Codes are minimum, right, so you can go this way, you can go that way, but these rules were put in effect for a reason, to have a minimum. Minimum sign distance from the road, 35 feet. Let's apply, see if we can get it down to 18 feet. So there was something to be said about you needed a 100 minimum feet of road footage. The variance said we're going to chop it down to 30, 30, 30, and 34 feet.

Chairman Maier – The intent in terms of what the applicant is explaining is to try to minimize the amount of road cut that he is putting in off the main road.

Mr. Maloney – So is my issue a Planning Board issue? Yes, it most likely is. Legally he can go ahead and do that and that's what I told the Board was that should they decide to go with the dedicated road, they don't need us to make a decision. I think the intent, from what was explained tonight, was to try to minimize the visual impact as much as possible from the road.

Mr. Maloney – Is it too late for me to deal with the visual impact of the ....

Chairman Maier – No, he's gone to the Planning Board for concept, informal.

Mr. Nearpass – There are plenty of gates in the process.

Mr. Maloney – Then maybe I should pursue that in a different way and again I apologize if I'm in the wrong place at the wrong time. (That's all right)

Mr. Nearpass – At one time that entire screen looked just like that, right. Everyone had a developer and had their home built. They had to come in and pitch something to the Planning Board and possibly a Zoning Board. It's kind of the only issue I take sometimes when, yes, there

is a little island left and the neighborhood has come in and they say you can't develop there. I look around and say the whole thing used to look like that and everyone got theirs.

There are plenty of gates left, so this isn't a done deal if we grant or disapprove a variance.

Mr. Maloney – Again, I don't want to take anybody else's time, I appreciate it. I'll talk to the Planning Board, maybe I can talk to the developer myself. Thank you very much.

Chairman Maier – Thanks for coming in.

Chairman Maier read the resolution. During the reading of the resolution there was a Board discussion regarding the condition to the resolution. Although private common utility and access easements are prepared and subsequently reviewed by the Town Attorney, and then filed with Ontario County as matter of course, as it is very important, and if the easements are not filed the situation can become a major headache, it was decided that the Board would rather be redundant and prepare the resolution with the condition included.

**RESOLUTION:**

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on July 5, 2016 from Scott DeHollander, 7346 Dryer Road, Victor, NY 14564 proposing a four lot subdivision on a Dryer Road vacant lot and is requesting to allow three lots with 30 feet of frontage and one lot with 34 feet of frontage, whereas Schedule II, Area and Height Requirements requires 100 feet frontage per each lot; and,

WHEREAS, said application was referred by Sean McAdoo, 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 July 10, 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 July 18, 2016 at which time one resident spoke 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 to

allow three lots with a minimum of 30 feet of frontage and one lot with a minimum of 34 feet of frontage at a proposed subdivision on Dryer Road:

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: Based on the presentation of the applicant the intent is to minimize the impact at the road frontage by developing the parcel this way.

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 could put in a dedicated road.

3. The requested area variance is not substantial.

Justification: The impact of a dedicated road and the proposed road would most likely be somewhat similar.

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

Justification: The parcel is zoned residential. The applicant does have the ability to develop the parcel without the variance.

5. The alleged difficulty is self-created. This consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

On motion made by Keith Maier, seconded by Mathew Nearpass:

NOW, THEREFORE BE IT RESOLVED that the application of Scott DeHollander, 7346 Dryer Road, Victor, NY 14564 proposing a four lot subdivision on a Dryer Road vacant lot with three lots with a minimum of 30 feet of frontage and one lot with a minimum of 34 feet of frontage, whereas Schedule II, Area and Height Requirements requires 100 feet frontage per each lot BE APPROVED:

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

1. With respect to a non-dedicated road an adequate private common utility and access easement shall be prepared, subsequently reviewed by the Town Attorney, and filed with Ontario County.

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

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

Adopted 4 Ayes, 0 Nays

Mr. Harter recused himself for the next two applications.

**LCS HOLDINGS – SIDE SETBACK** (Area Variance)

829 Phillips Road

Appl. No. 12-Z-16

Damicos LLC (827 Phillips) proposes to purchase land from LCS Holdings LLC (829 Phillips) to construct a driveway to the 827 Phillips Rd parcel. This would create a lot line that is 25feet from the building at 829 Phillips Rd, whereas Schedule II, Area and Height Requirements requires a 30 foot side setback.

The secretary read the legal notice as it was published in The Daily Messenger on July 10, 2016.

Sam Damico, owner of 827 Phillips Road addressed the Board.

Mr. Damico – I have some handouts that I'd like to give out. (The handouts were distributed) I share a driveway with 825 Phillips Road, Horsepower Restoration. I own a business in the city, family business, third generation, 98 years. I'm moving to Victor to the property there. I've owned the property for two years now. I'm having an issue with my neighbor. We share the driveway and it's constantly blocked. If you see in the pictures you can see that you can't even see my entrance in some of the pictures. I will be having trucks coming in and out of there. The neighbor has been irate with me. I've tried to deal with him a little bit, so much so that he dumped his snow in my parking lot this past year. I didn't say anything because I don't want to cause any trouble but I understand that that is illegal. Jim from LCS has been gracious enough to grant me the ability to purchase a 25 foot strip of property to the north so that I can put in my own access driveway so that I can eliminate the issue with my neighbor. As you can see with all the parking and problems this could be a potential safety issue as well as just they are turning around in my lot all of the time, they are tearing up my parking lot. Their customers are parking right at my entrance. If you see one of the pictures, you see a Snap-On Tool truck there. Every

Friday he parks in my right-of-way. I can't even get in and out of there and I'm not even running yet. I've tried to talk to these guys and they just seem to not really have any respect. It's very stressful for me so I just want to get out of that situation.

Mr. Nearpass – What is the business that you are operating?

Mr. Damico – Rochester Clutch and Brake Company. We're a manufacturer of clutch and brake material for agricultural equipment, etc.

Mr. Nearpass – Obviously the easement is still going to exist between the two properties or are you going to seek to have that removed?

Mr. Damico – No, that's on the deed.

Mr. Nearpass – It sounds like you tried to explore reasonable alternatives.

Mr. Damico – Well, you saw the large pile of snow.

Mr. Nearpass – To me 25 feet versus 30 feet isn't substantial. I'm a little bit indifferent, but obviously leaning on the side in favor of it. Issues with the neighbor are driving you to have to purchase a piece of your neighbor's land.

Mr. Damico – If I'm so willing to spend that kind of money, there must be a problem.

Mr. Nearpass – I feel for you. It just doesn't seem right, but maybe this is the best way to do it. You're the guy on the ground.

Mr. Damico – I'm trying to be nice to everyone. I tried talking to the one gentleman on the phone and he got quite irate with me and that was that. I don't even want to converse with that particular person.

Ms. Morley said she didn't have any questions.

Chairman Maier – You owned the building. (Yes) When you purchased the building there was an easement in the deed to access your building from this existing...

Mr. Damico – Yes, according to my lawyer I have the right of way and the idea is that I don't have to improve it, he doesn't have to improve. I don't have to plow it, he doesn't have to plow it, but it's a mutual thing that we should. Neither one of us own it, but he can't block it and I can tow vehicles. Now, I haven't done that and I don't want to do that.

Chairman Maier – Who owns this access point?

Mr. Damico – I guess it's 825 who owns it but in the deed it says it's my right of way. I'm land locked. They put an addition on their building. Before there wasn't too much of a problem, but right after I bought the property they put up an addition and now their employees are parking right there and they are right in my entrance. Plus you have UPS trucks, tool trucks, Macs Tools, Snap-On, you've got another guy. I told the Snap-On guy, don't park in my right of way, I'll let you park in my parking lot. Come in and park on the side. That worked for two weeks. Now he's back parking in my right of way. I don't know if he talked to those guys and they said this guy's a jerk just park wherever you want; I don't know.

I'm still in the process of moving over. We're hoping to be up and running by the end of the summer.

Chairman Maier – You believe that you had an access easement and you consulted your attorney. Did your attorney send a letter to this individual?

Mr. Damico – Yes, he looked into it. There is another whole issue there because apparently his attorney is quite.... I didn't want to cause any trouble, so at his advice we decided not to because I'm pursuing this. I wanted him to draft a letter to say I was going to start towing cars, but he said listen, let's try to be friendly about this. I took his advice. That's why I'm pursuing this driveway.

Chairman Maier – So there has been no correspondence, so there is nothing in writing between you and the other individual? (No)

Sean, I think we are showing part of this paved. What's required to be paved?

Mr. McAdoo – In this district any access point is required by the Zoning Code to have it paved.

Chairman Maier – All the way to the building. They will have to go to the Planning Board?

Mr. McAdoo – Yes. The history, is originally we were trying to get this to be an administrative lot line adjustment. That's when we discovered we had the conflict with the side setback which brings you here. Also, there were some drainage features that had to be added at the eastern property line of the front parcel. There are going to have to be some culverts put in so we realized the Planning Board has to have a say in also. Unfortunately, we had to kick that through the whole process.

Chairman Maier – So you have not been to the Planning Board yet? (No)

Have we had any contact with the Highway Superintendent in terms of issues relating to...

Mr. McAdoo – I've talked to him, he has no challenge with what is being proposed.

Chairman Maier – Does the fire department have any issues?

Mr. McAdoo – They didn't indicate any.

Mr. Nearpass – They still have the previous access to the building anyway right?

Mr. McAdoo – Right, exactly, they'll do what they have to do.

Mr. Nearpass – They'll go right over something if they can.

Mr. Damico – They restore cars there so they have a lot of money in those cars. You don't want to be running any of those over. I'm kind of nervous when I have to go around some of those vehicles.

Chairman Maier – It seems like an expensive resolution. Do you have to run power back through there?

Mr. Damico – I already have power.

Chairman Maier – There is the cost of the road also. Let me ask you, where are you going to park? Do you have to repave for parking?

Mr. Damico – I have an existing lot. We eventually would like to possibly pave it, but right now it is stone.

Chairman Maier – Ok, so this 7 foot by 81 foot area, or a portion of that, is parking, I see that.

Mr. Damico – It's actually a little bit bigger. They don't have the addition on their building in that picture.

Chairman Maier asked if there was anyone from the public who would like to speak, there was no one who spoke.

Chairman Maier – There is an email letter from the attorney for the owner of 829 Phillips Road, Laura Mullen. It says I represent Jim Urbanczyk, the owner of the property 829 Phillips Road,

kindly accept this email as evidence that Mr. Urbanczyk is aware of and approves of the application for the area variance for his property which would reduce his side setback to 25 feet. The Code requires 30 feet. Signed Laura Mullin esquire.

Chairman Maier read the resolution.

**RESOLUTION:**

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on June 6, 2016 from Venezia Associates, 5120 Laura Lane, Canandaigua, NY 14424 requesting to create a lot line that is 25 feet from the building at 829 Phillips Rd, whereas Schedule II, Area and Height Requirements requires a 30 foot side setback; and,

WHEREAS, said application was referred by Sean McAdoo, 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 July 10, 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 referred the application back to the Town of Victor Zoning Board of Appeals on July 13, 2016 assigning the referral as a Class 1 Action; 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 July 18, 2016 at which time one resident spoke for 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 allow a lot line that is 25 feet from the building at 829 Phillips Road.

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: It is not a substantial variation from the 30 foot setback. There was no one from the public to speak 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 presenter of the application made it clear that there have been difficulties accessing his existing parcel. The best alternative at this point is to utilize some other method of access.

- 3. The requested area variance is not substantial.

Justification: The existing Code calls for 30 foot setback and the request is for 25 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 is nothing being done that changes the neighborhood in an industrial zoned district.

- 5. The alleged difficulty is not self-created. Evidence was provided that the neighboring property owner has made it difficult to access the parcel at 827 Phillips Road through the access easement.

On motion made by Keith Maier, seconded by Donna Morley:

NOW, THEREFORE BE IT RESOLVED that the application of Venezia Associates, 5120 Laura Lane, Canandaigua, NY 14424 requesting to create a lot line that is 25 feet from the building at 829 Phillips Rd, whereas Schedule II, Area and Height Requirements requires a 30 foot side setback BE APPROVED:

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

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

Adopted 3 Ayes, 0 Nays 1 Abstention

**MARK’S PIZZERIA – FRONT SETBACK (Area Vaiance)**

6499 NYS Route 96

Appl. No. 15-Z-16

Applicant is proposing to demolish existing structure and is requesting to allow a new structure to be built 52.9ft from the right-of-way, whereas Schedule II, Area and Height Requirements requires an 80ft front setback.

The secretary read the legal notice as it was published in The Daily Messenger on July 10, 2016.

Mr. Mark Crane of Mark's Pizzeria addressed the Board

Mr. Crane – I'm here for a variance to get relief from the 80 foot front setback for the building.

I made a list of things here to tell my story. The new replacement building offers a slightly lower building profile and height. A roof design that shields or hides the roof mounted utilities is proposed. The new building is going to be a one story building instead of a two story building. This Board granted me a variance the last time I was here to put a sign on the roof. That variance that was granted for mounting the sign on the roof could be or should be eliminated. I'm willing to identify the permanent elimination of this variance as a condition of this variance. I'm not going to need it anyway because we are not going to have that building. Scott told me to mention that.

The building received an Architectural Review Committee approval from the Town. Right now the position of the building agrees with currently installed utilities routed to the existing building for hookup gas, electric, telephone, and water. Where the new building will sit, I can still use the utilities, especially the gas and electric as it comes from the Victor roadside. The position of the building now is affected by the parking lot layout. Which in turn is controlled by the existing New York State Department of Transportation median. It agrees with the position and constraints that this feature creates in its present location. The median affects entry and exit to the site as it is an obstruction that controls vehicles entering the site. Where the building and parking areas are presently shown allows for the balance of space east and west of the building used for this purpose. The layout therefore agrees with the NYS DOT feature.

The position of the building allows for a compliant stormwater design and stormwater control area to the west. This area is situated at the lower elevation parallel to Blossom drive. It is the optimal area for the location this feature. On the site plan approval we have the back corner at Blossom Road, that's where all the water goes back and it works the best.

The position of the building allows for circular traffic access around the building benefiting traffic flow and emergency vehicle access.

The Planning Board did support the granting of this area variance. Also the Victor Historical Society has no objection to the demolition of the barn, but expressed interest in retrieving some of the timbers from the building for historical purposes. I told them that whatever they wanted out of the building, they could have it. I'd actually help them put it aside and deliver it to somewhere in the Village. They talked about that but I don't know if they worked it out yet.

The landscape plan was developed and approved by the Town of Victor's landscape consultant. I think I told you last time, all the proposed lighting is to be dark sky compliant. All those existing lights on the telephone poles, I will be taking them down.

The last thing and I think the most important thing, as the building sits right now we would be one foot farther back. The reason why we are here tonight is because I couldn't exactly use the foundation that was there. The building is kind of an L shape now. I actually moved it one foot back from the front and the sides are in more and filled in the spot in the back. I think, because I didn't want to use that old foundation, which was the main thing. I figured I was putting a brand new building up, I didn't want to use that old foundation. Al Benedict spotted that. He said, Mark, you're going to have to go in front of the ZBA because you have to make sure that that is going to be OK. If you have any questions, I'll try to answer them.

Ms. Morley did not have any questions.

Mr. Nearpass – I think the benefits all around are an improvement to what the current building is. You've been in front of us once, you tried hard to make the existing building work. As it is today it's pre-existing non-conforming and it's less than 80 feet. You are going to be a foot farther away. We are proud to have you in Victor and investing in the community. I think it's going to be a great project. I personally see no issues with it.

Chairman Maier – It was a car dealership a long time ago. Was it originally a barn?

Mr. Crane – It was a barn definitely.

Chairman Maier – Then they just made modifications to it at some point in time.

Mr. Crane – Actually it was a Cider Mill.

Dan Crowley expressed that it was a restaurant at one time when he moved to Victor.

Mr. Crane – I met with the Historical Society a couple of times. I think it was 1935 or 1936 they built that as a Cider Mill and made pickles. When that went out of business then it became different restaurants.

Mr. Nearpass – Just curious, why did you have to take it down?

Mr. Crane – The main reason is when I first came here I was originally going to knock it down. Building a new building was expensive so I decided to try and use the original building. Then I really looked at the building. I tore the inside of it apart and it really is a barn. It's the old post and beams and they weren't even the post and beams for that barn they were post and beams from another barn brought to build this barn. Then there were a couple of places where they had to cut the beams out to put stairs in so it was all kind of disconnected. It was a little more than I wanted to get into.

Chairman Maier – Depending on how you want it done, there are very few people that are qualified to work on old barns.

Mr. Crane – The main reason why I came back with the new plan, two reasons, is I cut the floor out and talked to the inspector. I said Sean, I thought it was cement. A third of it was cement and then the rest of it was dirt. It was just a dirt floor. I thought if I had to pour cement I was starting from scratch anyway.

I met with the Planning Board and they made me change my plans a bit but I thought they came up with a really good design and started to get excited about it again. We went in a big circle twice.

Chairman Maier – It's similar to the one (Mark's Pizzeria) you have in Penfield, the design, right?

Mr. Crane – It's similar, but it's different because the one fellow, I can't think of his name, Al Gallina. Al wanted a gable on that thing and I didn't want a gable. I took it to the architect and it was drawn up and it looked pretty good. So he had a good idea. It is a little more expensive but it really looks nice. It's going to have the old brick on it. That's how I arrived where I am today. Some of the things I didn't want to do, the sprinkler, and some of the other things, I think when the dust settled and I weighed everything out, I think it was just worth it to start from scratch. Just build a very nice one and we'll get the families down there and I think we'll do OK with it.

Chairman Maier – I just want to be clear, it is pre-existing non-conforming. The existing building envelope is one foot ahead of what you are proposing, is that correct? You are building one foot behind what is already there.

Mr. Crane – Yes, farther away from the road.

Chairman Maier – I just wanted to get that on the record to be sure. There is no one in the public to speak for or against it. Let me read the resolution.

There was a discussion during the reading of the resolution. The request for the 52.9 feet setback was changed to 50 feet to give building leeway and in case of the overhang of the building was not taken into account.

## **RESOLUTION:**

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on June 27, 2016 from Scott Harter P.E., 7171 Victor-Pittsford Road, Victor, NY 14564 requesting to allow a new structure to be built 52.9 feet from the right-of-way at 6499 NYS Route 96,

Victor, NY, whereas Schedule II, Area and Height Requirements requires an 80 foot front setback; and,

WHEREAS, said application was referred by Sean McAdoo, 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 July 10, 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 referred the application back to the Town of Victor Zoning Board of Appeals on July 13, 2016 assigning the referral as a Class 1 Action; 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 July 18, 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 to allow a new structure to be built 50 feet from the right-of-way at 6499 NYS Route 96.

1. An undesirable change would not be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

Justification: The movement of the newly constructed building will be minimal relative the existing building. The Planning Board has indicated that they are in favor of the site plan and the Architectural Review Committee has indicated they are 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: What there is to work with, the building space, in terms of replacing what is there is limited.

3. The requested area variance is substantial.

Justification: Given that the setback should be 80 feet the variance is substantial, however, there is already a building that is pre-existing non-conforming and the location of the new building will not be significantly different than what already exists.

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

Justification: It has been highlighted from an environmental, drainage, standpoint that the building is being placed in the preferred spot and the Planning Board is in favor of the development.

5. The alleged difficulty is self-created. This consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

On motion made by Keith Maier, seconded by Mathew Nearpass:

NOW, THEREFORE BE IT RESOLVED that the application of Scott Harter P.E., 7171 Victor-Pittsford Road, Victor, NY 14564 requesting to allow a new structure to be built 50 feet from the right-of-way at 6499 NYS Route 96, Victor, NY 14564 whereas Schedule II, Area and Height Requirements requires an 80 foot front setback BE APPROVED:

FURTHER RESOLVED that the following conditions are imposed:

1. A sign attached to the roof shall not be permitted.

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

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

Adopted 3 Ayes, 0 Nays 1 Abstention

It was unanimously agreed and RESOLVED, that the meeting was adjourned at 9:25 PM.

Debby Trillaud, Secretary