

A regular meeting of the Town of Victor Zoning Board of Appeals was held on August 1, 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; Donna Morley; Mathew Nearpass; Michael Reinhardt;

OTHERS: Al Benedict, Code Enforcement Officer; Krista Rizzo; Kyle Schoenheit; Paul Poresky; Debby Trillaud, Secretary

The meeting was opened and the Flag was saluted.

### **APPROVAL OF MINUTES**

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

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

|                   |         |
|-------------------|---------|
| Keith Maier       | Aye     |
| Scott Harter      | Aye     |
| Michael Reinhardt | Abstain |
| Donna Morley      | Aye     |
| Mathew Nearpass   | Aye     |

Approved: 4 Ayes, 0 Nays 1 Abstention

### **PUBLIC HEARING**

KARATE ACADEMY - SIGN  
7235 NYS Route 96  
Appl. No. 19-Z-2016

Applicant is requesting two variances. Applicant requests to place a business sign 20 feet from the pavement edge, whereas per §165-4B(6) freestanding signs are required to be 35 feet from the pavement edge. Applicant also requests that the business sign be 32 square feet, whereas signs are not to exceed 20 square feet per §165-5B(1).

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

The secretary read the legal notice as it was published in The Daily Messenger on July 24, 2016.

Mr. Kyle Schoenheit of 1741 Seneca Trail, Waterloo, NY addressed the Board.

Mr. Schoenheit – About three/four months ago we started leasing the building on 1735 Victor Road from Keith Trammel. They have an existing structure that was approximately nine feet by six feet structure, a pipe tubing sign support. We sized a sign to replace the existing sign that was there when he vacated the building and moved to his other facility. Where we are right now is the sign is four feet by eight feet. It fits inside the steel pipe structure that exists today. It's 20 feet away from the road. We are looking for a variance on both the size and also the distance away from the road.

Mr. Reinhardt – Let's start with the variance regarding the size. The Code allows 20 square feet, you're asking for 32 square feet. (That's correct) Why can't you do 20?

Mr. Schoenheit – I don't think it's a question of why we can't do 20, we can do 20. The way we sized the sign is to be the most visible where the location of the structure is and to fit inside the existing structure. The other situation is, is that the location of the structure itself that has to retain the sign, is at a lower elevation than the road; approximately six to eight feet lower. The parking lot is about six to eight feet lower than the crest of the road itself. We just optimized the amount of space we had in the existing structure that the sign would fit in.

Mr. Paul Poresky addressed the Board.

Mr. Poresky – May I add to that? I own the Karate Academy. I'm co-owner. When I had the professional come out to size the sign, we looked at the grade of the building and where the sign sits according to the road so we could get the maximum attention. Everything else on the other side of the road sits above grade and easily seen and that's where your eye goes to. As far as what we feel is crucial to make people at least look to see what is there and to attract some attention. If we downsized the sign it's going to be eaten up by the size of the structure that it's in and it's going to disappear because it's down below the grade of the road.

Mr. Reinhardt – Let me rephrase my question then. On the application there are five criteria for granting a variance, did you have a look at that?

Mr. Poresky – I did not, I talked to Sean.

Mr. Reinhardt – One aspect that I'm looking at is number 2, whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance. In a short version, can you do what you are looking for in some other way? That's why I was asking in the first place, the Code allows you 20 and you want 32. It sounds like you are just trying to fit it into the pipe structure. Is that correct?

Mr. Poresky – We're looking for the maximum amount of visibility so they understand what we offer and that we are there. If we downsize it's going to be eaten up by the structure that was there for the previous business for ten years. I think it's going to hurt the business as far as clientele that might be attracted to come in and take a look.

Mr. Reinhardt – Route 96 is a sensitive area. It's a corridor. If you haven't seen it already, the County Planning Board has already chimed in, they are opposed to it, mainly because it is on the Route 96 corridor. In your theory, if you want more exposure, it's that barn door aspect, if you let the barn door open then all the animals are going to get out and everybody is going to want more and more exposure. That reason, just for more exposure, at least in my book isn't going to cut it.

Mr. Poresky – We didn't do this to ask for anything special, like we are the first ones to do it. We went up and down Route 96 and measured out other signs and took a look and there are signs that are out there that are closer to the road that are actually bigger than what we have. We're not here to ask for something that's a first. We are just looking to be on level playing ground with everybody else that is on Route 96. We do have pictures of other structures and signs that are there that exceed what we are offering as a variance.

Mr. Nearpass – I believe a lot of those signs, just like the sign that currently existed, fall into the previously existing, non-conforming and within the last six to seven years we changed the Zoning Code to try to minimize the impact of those types of signs. The Town has said gosh, the signs are getting too big, too close to the road, as changes come in we want to start moving them farther back and we want to start reducing the footprint of the sign. That's why you will see some that are out there. Al, correct me if I'm wrong, I can't think of a time when we've, for the reasons they stated and what Mike was talking about, just to get more visibility, if that's the request, I don't think we've ever approved a variance because someone wanted more visibility.

Mr. Benedict – I would agree with that. There has to be a hardship of some sort.

Mr. Nearpass – If an applicant proved hardship, if for example you tried to conform with the Zoning Code and a year or two have gone by and you have real evidence that proves you have a hardship, whether it's customer testimonials or financial data that shows no one can find you. The sign is too small, they can't see it or people are slowing down to try and see what it says; there is data like that that can be collected.

Every company often comes in here and says we want as much exposure as humanly possible. We're trying to balance that a little bit. One question I do have, is it the only business that's in the building? Is it the Karate, or is it Balance and Active Body?

Mr. Poresky – It's Balance Spa. That's actually the sign, is the Balance Spa, not the martial arts school.

Mr. Nearpass – That's what I'm trying to figure out. What's the sign that we are talking about?

Mr. Poresky – It's the one on the upper left. (Indicating sign images on screen).

Mr. Nearpass – Al, I thought in a situation where we had a monument sign and there were multiple businesses in a building, that you wouldn't have the business name on it and it had to be the name of the building or structure. Almost every Zoning Board meeting we have is a "Gorbel" or is it XYZ office park of which multiple subtenants are a part of.

Mr. Benedict – They are proposing just a sign that says Balance Spa which is one tenant. They are proposing wall signs for the remaining businesses.

Mr. Nearpass – So in your case, you would consider Balance Spa the name of the building?

Mr. Benedict – Yes.

Mr. Nearpass – I'm in the same boat as Mike in that if there was a better reason to have it other than we just want to maximize our exposure. On the distance, the 20 feet versus the 35 feet, I think I haven't heard your case on that one, but to me, if it was 35 feet, does that push it in to the parking lot?

Mr. Schoenheit – It does.

Mr. Poresky – If you did 35 feet on most of these signs, you'd be in the buildings.

Mr. Nearpass – Right now where it stands is 20 feet off the road, is that what it is Al?

Mr. Benedict – I believe that was an estimate on my part, yes.

Mr. Nearpass – What does it look like if you had to move it another 15 feet?

Mr. Schoenheit – It would be approaching the building and ingressing into the building.

Ms. Morley – What you are saying is you are looking for the Balance Spa sign variance, what are the two other signs, are they going to be on the building?

Mr. Schoenheit – That's correct. They are actually mounted on the building today.

Mr. Poresky – They were approved, they are already on there.

Ms. Morley – So basically the two signs that are on the building are a repeat of what you are putting on the front of the building, right?

Mr. Poresky – No, one is a directional sign when you go up to the door that you can only see when you park to go in, a directory on what's in the building and where. The martial arts sign is on the other end of the building, attached to the building. The Balance Spa sign is the structure that would be up front to let them know that that is the building that is right there.

Mr. Nearpass – As Al mentioned they are all on there as per the Code, right Al, they are not really part of this discussion.

Mr. Benedict – That's correct.

Ms. Morely - OK, I don't have any other questions.

Mr. Harter – The question I have is for Al, the existing sign that was there previously, the Trammel Photography, was that approximately 20 square feet?

Mr. Benedict – I don't recall the exact size of that. There was a permit for it.

Mr. Harter – Was it based on the amount of the building that they occupied? Is that how you come up with the 20 square feet?

Mr. Benedict – No, the Code allows one sign, 20 square feet maximum regardless of the size of the building.

Mr. Schoenheit – That structure itself, the tube structure that supports the sign is nine feet wide. That sign (the Trammel sign), just by identification of the eight foot sign that we have, is probably seven feet wide and about five feet tall.

Chairman Maier – The Keith Trammel sign? (correct) We took a look at it and it looks more like four by five-ish. That's one of the questions we have, is what was existing. It may not relate to what we decide to tonight, but we actually have a picture of it. It's hard to take a look at but based on the picture we have it looked to be more like four by six or four by five-ish.

Mr. Schoenheit – The horizontal span of that tube is nine feet.

Chairman Maier – The pole might be nine feet, but when we look at the sign there is space in between the sign and the pole. It is difficult to measure because the Trammel sign had a rounded top to it and a rounded bottom. How high off the ground is the pole?

Mr. Schoenheit – The horizontal, approximately six and a half feet off the ground.

Chairman Maier – Which would be consistent with the sign, about four feet, four and a half feet, on the Keith Trammel sign, based on what I saw with the space underneath and space between the top bar and the sign.

Mr. Schoenheit – With those assumptions, it would assume the sign was greater than the 20 square feet as per Code.

Chairman Maier – We hear about the existing signs all the time. You know what the process is with the sign ordinance, or really any ordinance, it's based on a lot of input from the public. Somebody doesn't just sit down and say we want the signs to change and we're going to push it through regulation. There are public hearings, there is a lot of thought that goes into it. The other thing that is interesting, this is for your reference, is that a lot of the sign requests that we get are people that are new to Victor. The existing businesses, I don't think we get as much feedback from as we do the new businesses. The existing businesses seem to be OK with it; it's the newer businesses. As Matt said, a lot of the signs that we see are preexisting. What we are attempting to do based on the input of the businesses and the residents is make that Route 96 corridor more attractive. Part of that is through the change is the sign ordinance.

One of the questions I have is with the setback. How far back is the parking lot from the...

Mr. Poresky – Looking right there, if we do another 15 feet back, you're in to the parking lot which means we can't access the other side of the parking lot.

Chairman Maier – The questions is, how far back does the parking lot begin, do we know that?

Mr. Poresky – I didn't take a measurement but I'm going to guess it's probably another 10 feet.

Chairman Maier – The reason I ask is because signs are a very sensitive topic. It's a very sensitive topic with the Town. I think you've seen or you will hear from the feedback from Ontario County that it is a sensitive topic with Ontario County. It's really pretty broad. One of the questions with the setback is that I think we may agree that 35 feet - we're not able to accomplish, what the Board may do, but I'm not going to speak for the Board, is to say, rather than the 20 feet, can we minimize the variance and can we have it 25 feet or 30 feet versus the 35 feet.

Mr. Poresky – We're not a large corporation. We're just individuals starting up a business, so to resize the sign, turn around with a structure like this and have to move it, you're talking about hardship at that point because the sign itself is going to run; the sign that we purchased was roughly \$900. To move a structure like this, to get anyone involved to bring it back, could be 2,3, \$4,000.

Mr. Reinhardt – Where are you getting that number from?

Mr. Poresky – You are talking about hiring a contractor, stripping this out completely, which is labor intensive, and then building something that would be conducive to what is here because now we're talking about the owner. We've kept the integrity of the building very high end so you're talking, it's going to run material and labor if we had to structure this and move it back.

Mr. Reinhardt – I appreciate the thought, but hardship isn't an element to granting a variance. I hear you, but in my world here, where I evaluate this request for a variance is, it doesn't matter.

Chairman Maier – Unless you can prove hardship, substantial hardship. I'm not going to speak for the Board.

Mr. Nearpass – To Mike's point, it's a factor, but it's not a criteria.

Chairman Maier – Right, but we base the decision on facts. We look at your request the same as we do everyone else's and so it's not that we are trying to be punitive, it's that we are trying to follow what the intent of the residents of the Town of Victor have requested be done on Route 96 with signs. There are applications where you may need relief but there needs to be a basis for that. We're asking these questions to get the facts before a decision is made. We get back to the setback; where specifically is the pavement relative to the setback. You are asking for 20 feet, how do we know it's 20 feet.

Mr. Poresky – It's been measured.

Chairman Maier – OK, do you have a map or anything that shows that it's 20 feet?

Mr. Poresky – No.

Mr. Benedict – For clarification, I did it with an aerial and clicked. I did not physically go out and measure it.

Chairman Maier – Would we happen to know how much room we have between the sign and the pavement, Al? Would it be five feet, ten feet?

Mr. Poresky – Can I ask a question? The structure has been there for quite some time, the sign itself has been there for well over ten years. We are a new business going in, but we are not a new owner of the building. That wouldn't come into play for moving that structure to get it to 35 feet or 30 feet?

Chairman Maier – What we have is your application for a variance and the facts that you have presented to us. Then we have the Code Enforcement Officer's response to that and what the Code says. That's what we are looking at, whether it's six months, ten years, we are looking at what the Code says and what you are asking for.

Mr. Nearpass – Any kind of change triggers trying to bring the site into compliance or trying to bring the sign into compliance.

Mr. Poresky – I understand that. My question was since we don't own the building, and that structure, owned by Keith Trammel, he owns it and has had everything set for as long as he has owned that building. That's where I'm coming from, because we come in and we rent it, it wouldn't grandfather in that the building is still owned by the same individual?

Mr. Nearpass – What's triggering it isn't the ownership of the building, it's that you want to change the sign. That the owner, you're here representing him I assume, wants to change the sign. So regardless of the business, even if the owner wanted to change the color of the sign or do something that is out of conformance then that triggers AI to take a look at it and say you really just can't change the sign anymore. It's preexisting, you can keep it exactly the way it is into perpetuity but the second you touch it is when this whole process kicks off.

Mr. Poresky – OK, I understand.

Mr. Nearpass – To the Chairman's point, every week there is a very similar type of situation where we have to work with the applicants to try and bring these sites; sometimes it's not 100 percent into compliance but a step towards being more compliant because of the new law and direction with the Code.

Mr. Schoenheit – So respectfully we are just asking for the variance based on the conditions of the existing structure and the sign inside the structure.

Mr. Reinhardt – I'm concerned with the thought that the structure itself, defining that as a monument, if you left everything alone, you wouldn't need a variance, whether for size or how close it is to the road. The posts aren't changing, the sign itself is changing. I have more a concern over if you are going to change the sign my focus is on the 20 square feet of the sign.

The location of the monument, I'm not so sure that that needs a variance. It's there, it's been there, it's preexisting. When was that post put in there?

Mr. Benedict – That sign was given a permit under the present Code. It just wasn't identified that it was too close to the road.

Mr. Reinhardt – I'm missing ... they got a building permit....?

Mr. Benedict – They got a sign permit for that specific sign and it was under the present Code. Unfortunately, it was not caught at that time that it was too close to the road. That sign had a permit and it would have required a variance but it was not identified at that time.

Mr. Reinhardt – What time frame are we talking about? Years or months?

Mr. Benedict – 2010ish.

Mr. Poresky – I looked at Google maps, I think that building was there...

Chairman Maier – That building has been there for a long time. The current owner, Keith Trammel has been there five or six years. Before that it was a boating supply place and before that who knows.

Mr. Poresky – I think that was the original because a friend of mine, who works across the street told me what it used to be.

Mr. Reinhardt – Al, do you know, what's your limit on once a building permit has been granted then at a later date if it needs a variance then to go back to the owner and say you need a variance for this thing after the permit and the structure has been completed?

Mr. Benedict – Understanding the discussion and the consult previously, I can declare a violation at any point in time.

Mr. Reinhardt – Regardless of the permit being granted?

Mr. Benedict – Correct. The permit can be revoked at any time from this information or findings that the permit was issued in error.

Mr. Reinhardt – Based on that, if it needs a variance for the location of the monument, then I think where Keith was trying to go was how far can you push that sign back before it encroaches into the pavement. That's our moving target, we don't know.

Chairman Maier – It's practically moving back, understanding the fact, again I'm not speaking for the Board, I would not expect you to put that sign right next to the parking lot because you've got plowing, you've got the potential for people to back up into it, but the question is what is the distance between that sign... I'm looking at it and trying to figure it out, I'm thinking maybe it's five feet.

Mr. Poresky – Maybe, because it's 20 feet from the road, so probably it's roughly five to six feet.

Mr. Nearpass – Criteria number 2, whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the area variance. If we had more empirical data, if we had a drawing and it showed that it was five feet and we had an estimate that showed that it was going to cost you \$2,000 to \$3,000, then we could make the case that really it's not feasible to spend \$2,000 to \$3,000 to move something by two and a half feet. I would say that is not feasible. My opinion on this is I'm OK if the applicant brings the size of the sign within Code but we let it stay where it is from a monument perspective. I think that's a happy medium. It would be great to have the data for the case that we are building that really showed a document whether it was five feet or six feet. In general we all know there isn't 20 feet to play with on the other side of that sign. To me it is not feasible that we ask them to move it. We could ask them to move it but the amount that they would have to move it would be low single digit feet away. I would support leaving the sign physically where it is but bringing the actual size of the sign that you are going to put there into compliance, within the 20 square feet.

Mr. Reinhardt – I would agree with Matt and maybe put a condition on that the current location of that monument sign has to be within five feet of that parking lot. If it's greater than five feet I think you have to come back. I know it's a bit of an arbitrary number but if you are saying it's about five feet, I'm OK, but if it turns out to be ten, 15 feet.

Mr. Poresky – That's not ten or 15 feet.

Mr. Reinhardt – I'm trying to help you out here. I'm trying to put a reasonable condition on it, to Matt's point, does it really make a lot of sense to move it back two or three feet, probably not. If it were 10 or 15 feet, it might be a different analysis. That's why I picked it, if it's five feet or less, I would be OK with that.

Mr. Harter – I'm looking at one of the photographs that was provided and just by eye it looks like a little more than what is represented in that photograph. I'm looking specifically right...

Mr. Nearpass – It also depends, if you see the pavement actually curves into. The sign that we are looking at right here, we also have it as a print out, and you can see the pavement kind of curves into where the cars are parked.

Chairman Maier – I see what you're saying Scott, you look like you may have about eight or ten feet on that picture.

Mr. Harter – Circling back on the opinion part of this discussion, I think I'm of the opinion if it's five or ten feet, when I look at it from the overall layout of where it is, I don't find the location disturbing, to myself anyway. I think if we were to somehow issue a finding to make them move it, I'm not sure in my mind what we would really be accomplishing with that besides making them do a lot of busy work to gain a few more feet. I just personally don't see the benefit in that.

Chairman Maier – We're still not going to get the 35 feet no matter what we do.

Mr. Harter – We're not going to get the 35 feet. I'm also thinking along the lines, maybe this is a question for Al, can we allow them to put the sign in this existing sign structure, as is, with some level of condition that should for example the site be reworked, should this become a new development sometime in the future and another opportunity arises beyond a tenancy change, that would seem to be an opportunity to take advantage of...

Mr. Nearpass – Which one are you talking about, the location or the size?

Mr. Harter – Let's say for example someone comes in on Route 96, not unlike this one or let's say this one, and they want to acquire the building and put up a completely different type of business. It's a tear down rebuild, like Mark's Pizzeria for example. I think that's an opportunity to gain a larger concession perhaps than what I think we could gain out of just a change of tenancy as I understand it tonight. I think we have to scale our determination based on what is in front of us. I think sometimes when someone comes in with a clean slate relatively, then I think we have more abilities to shift things around and bring them into greater compliance. You folks are just moving into an existing building, using the existing square footage that is there for your particular purposes and you wish to put a sign up that agrees with something that is preexisting, but nonconforming. To that end, my feeling is 20 square feet and I would allow it to stay where it is.

Chairman Maier – You are suggesting putting a condition on that this is for the current owner and if ownership changes .... How does that....

Mr. Reinhardt – I don't know if we can do that.

Chairman Maier – The question I had was with the enforceability.

Mr. Nearpass – I would say be as proposed as long as there is a 20 foot sign so if someone comes in and requests a variance for a 40 foot sign and somehow they get that because there is a completely new Board here, that the debate is also over the location of it. To me it would be, I don't know if it is a condition, but wouldn't it be the variances granted on the location as proposed with a 20 square foot sign.

Chairman Maier – A new sign, a new application AI, they've got to come see you and get a permit.

Mr. Benedict – Yes, but if they get the variance.

Mr. Nearpass – If they just ask for a 20 square foot sign it should be OK because we would be OK with the 20 square foot sign regardless of what company's name was on it. If they came in and said we want a 32 square foot sign AI would send them in front of us and then we would talk about that and we would say you can get the 32 square foot sign but we're going to ask you to push the sign all the way up against the building. There would be another debate, I think, and negotiation over it.

Mr. Reinhardt – I thought where Scott was going is if you change the footprint, new ball game. Like Mark's Pizzeria, that you can put a condition on.

Mr. Nearpass – I thought he said if you change the owner.

Mr. Harter – I think that Mike has what I was trying to say correct. I'm saying that this is a relatively small scale and it seems reasonable to not request the same amount, if you will, as we would on a larger magnitude project. I'm trying to figure out how to put that condition in there. What is of concern to me is that if we issue the variance...I don't have any problem issuing a variance to allow the 20 square foot sign to go in here, but, I'm concerned that we lock in this location for the sign at 20 foot from edge of payment forever, when we may have an opportunity down the line...

Mr. Nearpass – So you are saying you want to anchor it to a distance from the building?

Mr. Reinhardt – I would suggest the way to go is as it's proposed, the location, provided that the footprint and square footage of that structure remains. As soon as that footprint and square footage changes new ball game.

Chairman Maier – if somebody decides they don't like the stone, want to do something different, what triggers that AI?

Mr. Nearpass – I think it's the footprint, if someone wants to make it bigger.

Mr. Reinhardt – Right, footprint and square footage. That'll allow the footprint itself and then the square footage going up.

Mr. Benedict – Talking about the building? (Right) OK.

Mr. Reinhardt – I'm looking at the two dimensions that I see to change that structure. You either have to go wider or deeper or taller. To put the fence around it – it is the footprint and square footage.

Mr. Benedict – It sounds good.

Chairman Maier – What would the trigger be, from your perspective, to bring them back?

Mr. Benedict – An application for a new sign with a relation to a change in, as Mike said, the square footage of the building or the footprint.

Mr. Harter – If that happens then we have another opportunity to try and bring this sign location into compliance with our Code.

Mr. Nearpass – Are you OK with us granting the variance for the location but you need to bring the size of the sign in compliance?

Mr. Schoenheit – Yes.

Chairman Maier – The reason is Ontario County... you pretty much need everybody on this Board in order to get it approved.

Mr. Poresky – We're not here to buck the system.

Chairman Maier – It's alright. I'm just saying it's not as though a regular majority can approve your application, we need four members to approve it; so you can kind of get a sense where it is going although we haven't voted on it yet.

Mr. Nearpass – Are we just going to change the resolution to only be on the monument sign? Is that what we are doing?

Chairman Maier – We are granting or denying variances for both. There are two variances that have been requested. The other thing we are going to ask is do you propose any lighting on the sign?

Mr. Poresky – There is no lighting right now.

Chairman Maier – We’re going to put a condition that it conform to Town Code and there is a Code specifically for lighting and it is dark sky compliant. That the lighting be dark sky compliant; just so you are aware of that should you want to do lighting there are requirements for that.

Chairman Maier read Ontario County’s comments:

The County Planning Board has long taken an interest in supporting local efforts to limit excessive signage. The Board has identified Route 96 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 signs located on property adjoining primary travel corridors that do not comply with local limits on size and/or number. This classification is class 2, but their findings are: The proposed sign is on land along a corridor identified by the Board as being a primary travel corridor for tourists visiting Ontario County. Protection of the community character along these corridors is an issue of County wide importance. Local legislators have standards for signage that allow for business identification sufficient to safely direct customers onto the specified site. It is the position of this Board, the Ontario County Planning Board, that the proposed signage is excessive. Excessive signage has a negative impact on community character and their recommendation is denial.

Chairman Maier opened the hearing up to the public and no one spoke, hence he read the resolution.

There was a discussion during the reading of the resolution regarding the voiding of the area variance approval if someone wanted to put in a 100 square foot addition. It was decided that the variance would only be granted for what is at the property, 7235 NYS Route 96, currently and even if the building were 50 square feet bigger the variance would be null and void. The variance is locked in to the current conditions for the sign and building. Anything additional would necessitate and trigger the need for the applicant to return to the Zoning Board of Appeals.

**RESOLUTION:**

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on July 19, 2016 from Kyle Schoenheit, 1741 Seneca Trail, Waterloo, NY, 13165, requesting two area variances to place a sign at 7235 NYS Route 96, Victor, NY 14564; and,

WHEREAS, the applicant requests to place a business sign 20 feet from the pavement edge, whereas per §165-4B(6) freestanding signs are required to be 35 feet from the pavement edge; and,

WHEREAS, the applicant also requests that the business sign be 32 square feet, whereas signs are not to exceed 20 square feet per §165-5B(1); 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 24, 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, on August 1, 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 August 1, 2016 at which time no resident spoke for or against the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for placing a freestanding sign that is 20 feet from the pavement edge to be located at 7235 NYS Route 96, 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: The sign posts are pre-existing 20 feet from the pavement edge. There was no one from the public to speak against this request.

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 sign could be moved back slightly but the Board determined that the cost could be prohibitive and the amount the sign could be moved, within the

allowable space, would not be substantial compared to where the existing sign posts are now.

3. The requested area variance is substantial.

Justification: In terms of percentage, 20 feet as compared to 35 feet is substantial, however, the requirement for the 35 foot setback is not reasonable because it puts the sign into the parking lot and the cost to move the sign a few feet could be substantial and would not significantly change the appearance or impact on the environment.

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

Justification: To meet the Code the sign would be in the parking lot and the cost to move the sign a few feet is substantial and would not significantly change the appearance or impact on the environment.

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 Kyle Schoenheit, 1741 Seneca Trail, Waterloo, NY, 13165, for the first area variance of two, requesting to place a business sign at 7235 NYS Route 96, Victor, NY 14564, 20 feet from the pavement edge, whereas per §165-4B(6) freestanding signs are required to be 35 feet from the pavement edge 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. If there is a change in the footprint or square footage of the current structure or changes in the sign other than is approved for the application located at 7235 NYS Route 96, this approval is null and void.
2. All lighting of the sign, if lights are installed, shall be dark sky compliant.

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

|                   |     |
|-------------------|-----|
| Keith Maier       | Aye |
| Scott Harter      | Aye |
| Michael Reinhardt | Aye |

Donna Morley      Aye  
Mathew Nearpass      Aye

Adopted    5 Ayes,    0 Nays

AND BE IT FURTHER RESOLVED, WHEREAS after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for placing a 32 square foot freestanding sign to be located at 7235 NYS Route 96, Victor, NY 14564:

1. An undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

Justification: This is based on the feedback from the Ontario County Planning Board and also the prior owner's sign was visible from the road and closer in size to the 20 square foot size required by Code. The applicant did indicate that the needs of the business could be accomplished with a 20 square ft. sign.

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 same benefit can be accomplished with a 20 square ft. sign.

3. The requested area variance is substantial.

Justification: The difference between what is required by Code and what has been proposed is a substantial variance.

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

Justification: The intent of the Town and Ontario County is to minimize the amount of signage on the NYS Route 96 corridor.

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 Kyle Schoenheit, 1741 Seneca Trail, Waterloo, NY, 13165, for the second area variance of two, requesting to place a business sign at 7235 NYS Route 96, Victor, NY 14564, that is 32 square feet, whereas business signs are not to exceed 20 square feet per §165-5B(1) BE DENIED:

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

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

Adopted 5 Ayes, 0 Nays

It was unanimously agreed and RESOLVED, that the meeting was adjourned at 7:50 PM.

Debby Trillaud, Secretary