

A regular meeting of the Town of Victor Zoning Board of Appeals was held on September 19, 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; Michael Reinhardt; Donna Morley

OTHERS: Al Benedict, Code Enforcement Officer; Jason Cline; Anthony Valenti; Debby Trillaud, Secretary

The meeting was opened, the Flag was saluted, and the Pledge of Allegiance was recited.

**APPROVAL OF MINUTES**

On a motion by Keith Maier, seconded by Scott Harter,

RESOLVED that the minutes of June 20, 2016 be approved as submitted:

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

Approved: 5 Ayes, 0 Nays

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

RESOLVED that the minutes of August 1, 2016 be approved as submitted:

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

Approved: 5 Ayes, 0 Nays

On a motion by Scott Harter, seconded by Michael Reinhardt,

RESOLVED that the minutes of August 15, 2016 be approved as amended:

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

Approved: 3 Ayes, 0 Nays 2 Abstentions

### **PUBLIC HEARING**

1308 EAST VICTOR ROAD  
Garage Setbacks  
Appl. No. 2-Z-2016

Applicant is requesting two variances to build a garage with a side setback of three feet and a front setback of 24 feet, whereas a five foot side setback and an 80 foot front setback are required per schedule II Part II-Area and Height Requirements.

Mr. Jason Cline is returning after receiving a 120 day extension of time which is valid until October 2, 2016. The original public hearing was held on April 4, 2016, was tabled, and given the extension of time at the May 16, 2016 meeting.

The time extension was given for the Town Board amendment of the Zoning Code to permit nonconforming single and two family uses in commercial, commercial/light industrial, and light industrial zoning districts to have customary accessory uses and structures.

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

Chairman Maier - Mr. Cline would you like to come up and give us a brief overview of what you've probably given us a brief overview of before.

Mr. Cline – Just that I'm hoping to build a garage on the house. I'm asking for a 24 foot setback and a variance for the three foot setback as opposed to the five feet on the north side.

Ms. Morley – No comments, it's the same as before.

Mr. Harter – I just wanted to recap, you were before us maybe six months ago. At that time we noted that the changes that you were proposing, setback issues, were just not technically permitted in the zoning district where you are located. You have since, to your credit, had the Town Board revise the Code to allow residential usage in that zoning classification. Is that correct?

Mr. Cline – Correct.

Mr. Harter – I commend you for doing that. I know, for the sake of a garage it was probably a lot more effort than you were anticipating and I'm sorry you became the lone ranger in that regard, but that was very good.

Mr. Reinhardt – I'm looking at the aerial map, looking at 1296, there appears to be a structure, it might be a garage, I can't tell you exactly what it is or how far it is, but the question I have is why can't your proposed garage be farther back on the property; maybe much closer to the 80 foot setback? Do you follow my question? I understand there is potentially a shed in the way, a framed shed...

Mr. Cline – There is not a shed, but there is a large tree.

Mr. Nearpass – On the engineer's diagram it says "framed shed".

Mr. Cline – It was on skids, it's not there. If you look at the picture, the actual picture, see the big tree behind it. If you go back too much farther, you'd have to take out that entire tree. It sits on the boundary line. Which is interesting because of the aerial picture you have. It's been there a long time, I guarantee it; it's huge.

Chairman Maier – How far back is it?

Mr. Cline – About 30 feet. It's probably about 10 feet beyond where the back of the garage would be.

Mr. Reinhardt – I think the tree is showing on the aerial, but where your sharpie pen has it, it looks like that tree is not on your property. It looks like it's on 1296.

Mr. Cline – It's the boundary.

Mr. Reinhardt – So why can't you push it farther back onto to your property so that you are in compliance with the Code?

Mr. Cline – I mean you would have to cut half of the tree.

Mr. Reinhardt – But the tree canopy doesn't encompass the entire back yard, does it?

Mr. Cline – No, but because it is right on the boundary line, so the limbs and everything; I mean if you were to move the garage back you'd have to take half of the tree off to move it back farther.

Mr. Reinhardt – Can you put your proposed garage behind the house? Is there anywhere in that yard that a 24' x 22' garage can fit on your lot behind the house that is in compliance with the 80 foot setback without hitting the tree?

Mr. Cline – Probably, I mean there is a yard in the backyard. I mean you could put it in the backyard.

Mr. Reinhardt – In granting a variance one of our functions is to look at whether or not there are feasible alternative means to comply with the Code. That's what I'm trying to get at.

Mr. Cline – Yes, I could cut that tree down, the part that hangs over on my property and move it back, yes.

Mr. Reinhardt – So it's functionally possible?

Mr. Cline – Yes.

Mr. Reinhardt – That's all I have for now, thanks.

Mr. Nearpass – So there are two setbacks, right, there is a side setback and a front setback. Looking at the neighborhood, is there anything, Al, that meets the front setback of 80 feet? Are all of the homes preexisting, nonconforming? The homes themselves are within... some of them look like they are right on the road.

Mr. Benedict – I believe most of the homes are preexisting, nonconforming. If you look down to...

Mr. Nearpass – Is 1296, the one that's in the picture that we are showing on the screen just above the applicant, is that accessory structure 80 feet?

Mr. Benedict- It might be.

Mr. Nearpass – The ones across the street, 1301, looks like it probably meets the 80 foot setback with the home. Is there a real reason why you couldn't, to Mike's question, be conforming and have the structure be 80 feet?

Mr. Cline – I suppose you could; it would not be esthetically pleasing, nor very useful. I mean it would take up all of my backyard. The kids wouldn't have any place to play. I suppose, and then you would have a big driveway. I guess my feeling is that the rest of the houses are going to be forward of where the front of this garage is going to be. I don't think it's an unreasonable request to have it setback 24 feet when my house is forward of that. The house next to me is forward of that. All of the houses are less than 80 feet from the road. The houses themselves.

Mr. Nearpass – I'm also looking at the accessory structures of those homes. Your neighbor looks like they are conforming; across the street looks like they are conforming; the house diagonal looks like the whole house is within the feet. I'm just trying to find what is unique...

Mr. Cline – The two houses on this side are not.

Mr. Nearpass – The two to the south are not, so there is a smattering of ... the accessory structures that I see, other than the one to your south, look like they are within the Code. Usually if there is some unique circumstance, a picture of your backyard or obviously if the topology of the land doesn't allow you to reasonably put something there.

Mr. Cline – It goes downhill a little bit, I don't know if that would make a difference or not.

Mr. Nearpass – It's not for me to prove. The other part was the three feet versus five feet. Is it only three feet because it's so close to the home, you can't really move it too close to the house?

Mr. Cline – Right, in order to make it a small two car garage, if you narrow it up to five feet, it's pretty tight.

Mr. Nearpass – I'm saying if you moved the garage back, you would still be able to have it 24 feet wide and be five feet off of the side property. Frankly, I just look at it and... there is no framed shed, it doesn't exist. There is no framed shed in the back either, so those two framed sheds are both gone?

Mr. Cline – No, that one is there. I'm trying to figure out how far 80 feet back goes. The lot itself is 124 feet on that side, so 80 feet is going to put it in the back of the back of the lot. Which then, I don't have to have 80 feet from the back of the lot too?

Mr. Nearpass – What's the rear setback A1?

Mr. Benedict – 60 feet.

Mr. Cline – So 60 and 80, it's not mathematically feasible.

Mr. Nearpass – Do you have an alternative diagram? This is what you want, but there is an alternative that at least meets...

Mr. Cline – No, because mathematically you can't put a 24 foot garage in that space and meet both setbacks.

Mr. Nearpass – So you have solved this to be compliant with the rear setback?

Mr. Cline – Yes, I guess, yes. I didn't even know about the rear one, I was just asking. I didn't even give it a thought about the rear one when I put it in because I figured it probably....

Mr. Benedict – As I recall, when we were talking about it and he had the pool, I think I did some measurements that the pool would meet the 60 feet setback. Unless he went too far back with the garage he would still be compliant with the rear setback.

Mr. Nearpass – But the pool is compliant?

Mr. Benedict – Correct, I think he is within five or ten feet.

Chairman Maier – Al, is the residential side setback 20 feet?

Mr. Benedict – Normally it's 15 on the sides and the rear.

Mr. Nearpass – I thought here it said it was five.

Chairman Maier – It is five.

Do you understand why there are setback requirements? Why Towns impose those?

Mr. Cline – Yes.

Chairman Maier – One of the issues I have, you know here you are fortunate that you are allowed five feet because of the way it is zoned. I personally have an issue with – I think five feet is too little. That's my opinion, I think five feet is too little. You know we're going to read the letters from your neighbors and I think everyone was OK with it. The questions becomes, down the road, it's not as much the neighbors that you have now, it's the neighbors that you have in the future. They have to move in there and live with what we've decided tonight. I really have a hard time, and maybe someone on the Board can convince me it's OK, where you are taking all the water off the roof and your driveway, we don't have a grading diagram here, but it looked

like to me that you were taking it to the north and west. The water off that roof is going to the north and west.

The other questions I have is how do you do any work on the property, on that building, without infringing? We've got a fence there, is it your property the fence is on or your neighbors? Do we know that?

Mr. Cline – I don't know, I think it's on his property.

Chairman Maier – That's the point. I'm aware of many situations where it has caused problems between neighbors because we've put things so close to each other. Personally, I think that five feet is not enough. I just want to give you my opinion of the side setback. I think one of the things that Matt was getting at was is there a way to mitigate? You are not going to be able to get the setback from the front, but is there a way to move this back, let's say 10 feet, and shift it to the south and only have the front setback variance, if you follow what I'm saying. It looks like you have room to shift it to the west and to the south and get the five foot setback and get a little bit better setback off of the roadway; maybe get a 50, 55 foot setback off of the roadway. I think that was one of the things that Matt was alluding to.

Mr. Cline – I did address one of things you said about the watershed. I turned the roofline so that it sheds only on my property. I purposely did that because I talked to the neighbor. That leaves the three foot setback which leaves you three feet to put the siding on the end of a garage with no window. There really wasn't any maintenance other than to construct it. I do understand what you are saying. I think one of my issues is that that tree would have to be removed in order to do that. It encroaches over the backyard by probably 20 feet. If you start moving the building back. I would just hate to cut half of a tree out.

Mr. Reinhardt – If you push it straight west, if you move it a little west and south so that it's either close to or .... Let me ask you this, why can't you connect it to the house?

Go back to the drawing please.

Mr. Cline – There is a cellar way right there.

Mr. Reinhardt – Why can't you put it here? (Pointing to survey map)

Mr. Cline – The roof line sheds ... I'm not sure how you would connect with the roofline the way it is.

Mr. Reinhardt – Do have an engineer or an architect who says you can't put it there?

Mr. Cline – I didn't say that.

Mr. Reinhardt - Even if it's not attached to the house, somewhere behind the house. We've been trying to look at other feasible methods, more in the backyard, and certainly in compliance with the Code with the side setback and maybe much closer or less of a need for a variance for the front setback.

Therein lies the rub for me; I'm not comfortable with the three foot setback and as far as the front setback, that's substantial. I think there are feasible methods and means to accomplish what you are looking for, to put a garage there for not asking for such a large variance – for both variances.

Mr. Cline – I'm not following you.

Mr. Reinhardt – You are asking for two variances. This is my view, my opinion, I'm not speaking for the Board, just so the Board know where I'm coming from. For the criteria on the side setback of three feet, I'm not in favor of it, it's just substantial. There is another way that you can do it. I think it can be achieved by some other means. When I look at the criteria, half I would agree with you, that it would not be a substantial impact on the character of the neighborhood. I'm also looking at that it can be achieved by some other means and the variances are substantial. Just so the Board knows where I'm coming from and on both of those variances that's where I stand.

Mr. Harter – I have a couple of questions that I think are relevant to this discussion. Is the tree that we are speaking about, is that located where the “framed shed” is currently plotted on the drawing. Is that approximately where it is?

Mr. Cline – No, it's ahead of that. Do you see the little notches right here (on the plan), that's the trunk of the tree.

Mr. Harter – That's where the trunk of the tree is, OK. Another question I had was, when I look at the aerial and I look at the plot plan, it looks like there is another little building, and it's also pictured in your elevation photo, there's another building that is kind of not really shown on the plot plan. Is my interpretation correct? It would be, that right there. (showing on picture).

Mr. Cline – That's the cellarway that's on the plan right here.

Mr. Harter – The cellarway is on the plot plan?

Mr. Cline – Right here, it says cellar entrance.

Mr. Harter – It's not on the one I'm looking at, it's faded away. Ok, I understand now, let me just draw that in. OK. So with that cellarway being there then, as you mentioned, you don't then have any access between the buildings, is that right?

Mr. Cline – That is correct.

Mr. Harter – They are all kind of locked into one another, is that right? You said the grade falls off as you go to the west then. Those are my questions.

Mr. Cline – It does.

Chairman Maier – West and then north, from what I can tell.

The other questions I have, there is no overhang on the garage?

Mr. Cline – I don't, where?

Chair Maier – The variance, the five foot setback, or whatever the setback is, is to wherever the building starts, whether it's the overhang or anything that is sticking out.

Mr. Cline – A soffit?

Chairman Maier – Yes, an overhang. So you've measured to the foundation or measured to the overhang?

Mr. Cline – To the foundation, so the overhang counts too, right?

Chairman Maier – Right, which is 16 inches.

Mr. Benedict – This Board in the past has determined that you go to the overhang.

Ms. Morley – So then it wouldn't be three feet, it would be 16 inches less than three feet?

Chairman Maier – If the overhang was 16 inches. The minimum would probably be 12 inches.

Mr. Benedict – There is no Code requirement for that.

Chairman Maier – I know, but it's normal.

Mr. Nearpass – The other thing is the question of the tree. It's your tree (asking the neighbor in the audience)?

Mr. Valenti (1296 East Victor Road) – Yes.

Mr. Nearpass – But it overhangs on your side of the property? (asking Mr. Cline) Who would actually be the one that legally cuts that?

Mr. Reinhardt – You are going to get into a legal question, I'd stay away from that. That's their problem.

Mr. Nearpass – Mr. Cline has referred to it almost as a hardship; because I can't possibly push this back and cut the limbs of the tree down.

Mr. Reinhardt – That does not factor in your analysis, that's their problem to figure out.

Mr. Harter – Can I also just mention on the subject of the tree that I think not only do you have the branches to cut but if you excavate for the foundation, you're going to hit the roots.

Chairman Maier – Unless you shift the garage over. The tree is where the shed is? And the shed is on the property line up against the fence?

Mr. Cline – Right, Correct.

Mr. Nearpass – I thought the shed wasn't there?

Mr. Cline – It's not there now.

Chairman Maier – Oh, it's not there.

Mr. Harter – It was there, but it's not there anymore.

Chairman Maier – It shows “framed shed” on the application that we have. It shows it on the map that we have.

Mr. Cline – It is not a framed shed, it was on skids.

Chairman Maier – It's a temporary shed.

Mr. Cline – I don't know what it was.

Chairman Maier – Is there a way to go with the five foot setback with the overhang.

Mr. Cline – I would be happy to do that at this point. Believe me, this is beyond frustrating. I mean six months ago when I brought this to you guys, you didn't bring any of these points up, all you did was use the language against me. Then I go through the process and get that rectified and then you bring all these new things up.

Mr. Nearpass – Hold on, I specifically remember this. We walked through, to your point, the cumbersome process and you went through and did it. We also were very clear, I thought, in saying that once you get past that hurdle, you're like everybody else that has to come in front of us and answer tough questions about your project. We really never got to the project. We didn't get to how far this or that. We were really on the Commercial – Light Industrial versus Residential. You went through that successfully and now you're here like everybody else that is in a residential district and is asking for something which a good percentage of us feel is substantial.

Chairman Maier – We have to deal with the facts that are presented to us. When you came in the first time, you were not allowed to do what you are proposing based on the Code. That's what we had to deal with and that's it. Now you had submitted other information but we can't deal with that. We have to deal with the facts.

The other thing we have to deal with is that we get applications where people want something and the other question is whether they really need it or if there is another way to accomplish it. That's what this is about. There is a law; there's a Code. There is a law here and you're not asking us to break the law, but you are allowing us to give you relief from the law that is in the Town of Victor and that was in place when you bought the property. The Code as it existed, was there when you bought that property. What we're doing is trying to fairly come up with justification to allow you to do what you say you want to do. It may seem like a lot of hurdles. These were not created by this Board, the residents of the Town, through the Code, have said this is what they want. Now you're asking this Board to make an adjustment for you because this is something that you want that was not available when you bought the property. That's why we go back and forth with this and it seems like hurdles. It's the way the law is written and that's what we have to deal with. We really can't be arbitrary with it either and you are telling us that there are other alternatives. You've stated on the record that there are other things that you can do. We're not throwing you anything new.

Mr. Cline – Not really there isn't because I can't meet the rear setback and the front setback without a variance, not mathematically. I mean, look at the numbers.

Chairman Maier – You can go with a smaller garage. You can move the garage back. You can make the garage a different design. It does not have to be 22' x 24'. There are adjustments that

you can make, perhaps, and you haven't given us many options, but you can move the garage around.

Mr. Cline – Not and meet the front and rear setbacks.

Chairman Maier – I understand that, but if you go through what we're required to do, we're required to minimize the impact or minimize what's being proposed.

Mr. Nearpass – I don't think you've heard anyone here tonight say you have to meet the front and the rear setback. We know it is mathematically impossible.

Mr. Cline – Actually I did hear people say that.

Mr. Nearpass – No, no, simultaneously, we are not trying to force you to simultaneously conform to something that is mathematically impossible for you to do. We're trying to minimize the impact of a variance, if it is granted. That's all we are trying to get at. We're not trying to force you to do something that mathematically is impossible.

Mr. Cline – I guess my frustration comes when the duplex two doors down from me was granted an all-encompassing variance by the same Board so that they could build a duplex on a Commercial-Light Industrial ...

Chairman Maier – We don't speak to the facts of other properties.

Mr. Nearpass – When you say the same Board, I don't remember, Al, when was that variance granted?

Mr. Cline – I have the paperwork.

Mr. Benedict – You're talking about 1322 to 1324? Is that the one you are talking about? Two doors down?

Mr. Cline – Yes.

Mr. Benedict – That was granted a use variance in the 90's I think, maybe 2000.

Mr. Nearpass – It wasn't this Board.

Chairman Maier – And the law could have changed, we don't know. The other thing is that there could be accessory structures that are here that perhaps permits weren't issued for, that perhaps

just kind of showed up, like other structures. We can't speak to some of the other things that take place. We just have what's in front of us.

Mr. Harter – I just wanted to throw out a possibility in my mind. Doing this as I do quite often. Relative to the 60 foot rear setback and the 80 foot front setback. If you were to slide the garage to the west another 24 feet. You've already got 24 feet to the front of the garage, you've got another 24 feet for the width of the garage, which makes 48 feet according to my math. If I take 48 feet from the northerly property line which is 125, that gives me 77 feet to the rear property corner, which is greater than 60 feet. That would seem to me, yes I think I understand it would interfere with your tree, but I think it would be somewhere along the lines of where I think we're going with this discussion. I would just throw that out there informationally as maybe a possible alternative.

Mr. Cline – So you are suggesting a 50 foot front setback.

Chairman Maier – It would be 48 feet. It's looking as though it would give you the flexibility to shift the garage to the south with enough room so that you wouldn't need the side...

Mr. Cline – So it takes up the entire part of the middle of my backyard, where the kids play.

Mr. Reinhardt – Maybe I can help a little bit. The function of this Board is to hear applicant's requests for an exception to the rule as the Chairman has pointed out. It's your burden, your burden to prove, to show why it is that an exception should be made to the law. It's not for us to brainstorm a whole bunch of ideas for you to help you figure out what it is. I think we are going above and beyond what we're trying to do and help the applicant understand what the problem is here. Sometimes when applicants come to us they have architects and engineers and topo experts to say look, you can't go here, because, and here is a diagram and they really give us a whole bunch of breadcrumbs, if you will, and lead us to why it is this variance needs to be granted. Quite honestly, and with all due respect, you're making us think way, way too hard on this thing for you, to help you figure out what you want to do on your property. Please, we're trying to help you here, but understand it's your burden to prove why it is that this variance should be granted.

Mr. Cline – Because I want a garage, like everyone else does. I want a garage that is next to my house like every other person in the community has. I want a garage that I can park two cars in, like you do, like you do, like you do, like everyone gets. I want a garage on my house that I can walk out my front door and walk into my garage; that I don't have to walk 80 feet in the middle of my backyard to park my car. I want a garage that is in conjunction with my house, that is next to my house, like yours is. That's what I want. You asked me what I wanted, you asked me.

Mr. Reinhardt – I bought a piece of property that complies with the Code, so I can have a garage there with my eyes wide open of what I was buying. You're asking for an exception to two rules here; a side setback and a front setback.

Mr. Cline – I said I would give up the side setback, fine. I'll narrow up the garage. If this were a house like everyone else gets, we wouldn't even have this front setback issue.

Mr. Nearpass – I don't understand the comment.

Mr. Cline – What is a front setback in a residential district?

Mr. Benedict – Generally 40 feet.

Mr. Nearpass – But you are also allowed a five foot side setback. Most properties don't have a five foot side setback, most of them have 15 feet. There are gives and takes and trade-offs on every piece of property that are known to all of us when we buy it. Mine is a 15 foot side setback, yours has five feet. There are plusses and minuses and just to add to what Scott said, it's not that we're against you on that, but we are used to seeing more options. Often an applicant will come to us with a want. This is 100% what I want, I want the variance for this, but generally the next page or two are other supporting evidence. Here are some other options or here is why it can't go here. There are a lot of situations where the 80 and 60 foot setbacks allow someone to have a two by two foot building on their property because the property is not that big. Then they will show it to us and they'll prove that that is not an option. Next page, here are some other options that are more feasible, maybe less impactful than what is proposed. I see a want here and what I don't see are maybe the other one or two options of what is possible or proving to us, Matt Nearpass, it's crazy if you are asking me to put the garage here; I couldn't possibly put it here because of the slope of the property or because there is a utility easement or a pipe going back there or some other unique circumstance. It's really not just because you want it. Unfortunately, it doesn't give this Board the evidence to approve it because you want it. You really have to prove to the Board that we are minimizing the impact and that you've looked at every other option to minimize the impact and generally that is when the decision is made or the earliest we can come to an agreement. That's all. To me that's what it's missing.

Mr. Cline – I just don't understand why, what is the issue with the 24 foot setback? Why is that a problem?

Mr. Nearpass – The law says...

Mr. Cline – I get the law ...

*Inaudible conversation, people talking over each other.*

Mr. Nearpass – Hold on, I'm looking at the evidence you provided. Across the street it looks like it's 80 feet for two garages.

Mr. Cline – That's a 200 year old barn across the street. A mill.

Mr. Nearpass – Right next door, which is that one? It looks like their accessory structure is also 80 feet.

Mr. Cline – But the house is right next to the road.

Mr. Nearpass – The house is just like yours.

Mr. Cline – You don't have to have a setback for a house?

Mr. Nearpass - What I'm trying to say is with what you have provided there is a mixed set of data here. Some of it shows that the accessory structures are within compliance of the 80 feet. You are in a mixed use area, right, where it is residential and commercial living together. It's unique, I get it, and trust us, we're trying to work with you to come to a ....

Mr. Cline – I don't feel that way.

Mr. Nearpass – I'm sorry that you don't.

Mr. Cline – Six months ago, I came to the Board and I thought I put forth a reasonable request and was quickly shot down despite the fact that the same law allowed somebody else a similar variance, so I fixed that. I went through a great deal of work to get that done so that I could come back here and get shot down again for the same thing that I was requesting before. Only for a different reason.

Chairman Maier – It's not the same thing. What you came with here before was not allowed. It wasn't allowed. Now it's allowed, but you're asking for a different set of criteria.

Mr. Cline – But now it's not allowed.

Chairman Maier - It's kind of like a speed limit. The speed limit is 55 mph. You don't like it and you want to do 70 mph.

Mr. Harter – And everybody else is doing 70 mph around the neighborhood.

Chairman Maier – Yes, and you say everyone else is doing 65 mph, but you know that's what it is. What we're trying to explain is that that is the law, OK. It's the law. Really, quite honestly, you've made the determination difficult because you haven't given us a lot to work with.

Mr. Cline – I don't know what you want, though.

Chairman Maier – We want you to tell us why you can't move the garage and why it needs to be there.

Mr. Cline – Because it would take up the middle of my back yard. I don't want a garage in the middle of the back yard. I don't think that's an appropriate thing for the neighborhood. I don't think the neighbors are going to want that.

Chairman Maier – I think with the 48 feet, I don't see it in the backyard. I don't think it goes farther than the swimming pool does. That's the other thing too, we're working with a set of plans that are a little bit limited, but I'm not showing it going to the backyard. It's going 24 feet back; what we have discussed was an additional 24 feet, going back an additional 24 feet.

Mr. Cline – So then it's not even close to attached to the garage, it's completely separate.

Chairman Maier – Again, I can't tell, but based on what we are looking at, it still is in alignment with the house.

Mr. Nearpass – It wouldn't be aligned with the house. Where the back of the garage is proposed is where the garage would start.

Mr. Cline – It would be beyond the back of the pool.

Chairman Maier – Then give us something to work with.

Mr. Cline – What do you want me to give you, that's what I'm asking?

Chairman Maier – How about 22 feet?

Mr. Cline – It's still not going to be attached to the house.

Mr. Nearpass – Is this one attached to the house?

Ms. Morley – You're not showing it attached to the house.

Mr. Cline – It is, that cellarway is, look at the picture, the actual photograph, it will attach to that cellarway.

Ms. Morley – Can I tell you something. On here (the plot plan) you're not attaching it.

Mr. Cline - That's your photocopy. The photocopy, you can't see it on there. I don't know who photocopied it, but if you look at the one that is on the screen up there, you can see the cellarway.

Mr. Nearpass – Is the cellarway attached to the front?

Mr. Cline – It's right there.

Mr. Nearpass – I see it, but your 3-D drawing, unfortunately to me, looks like the cellarway is behind the garage. That's how I looked at it.

Chairman Maier – And you said it wasn't feasible to attach the house to the garage.

Mr. Nearpass – When Mike asked you why don't you just attach it, you said it wasn't feasible because of the cellarway.

Mr. Cline – Well you can't attach it to the side of the house because of the cellarway. I thought that's what you meant. You mean attach it to the cellarway or to the side of the house, like get rid of the cellarway?

Chairman Maier – I see nothing that shows the garage being attached to the house or being close to attached to the house.

Mr. Cline – It's attached to the cellarway which is attached to the house.

Chairman Maier – What I'm saying is we don't have that in front of us.

Mr. Cline – It is too. Go back to the other picture. Go back to the site drawing, right there, this is the cellarway.

Ms. Morley – Yes, but we don't have that on our drawing.

Mr. Nearpass – It didn't come through on our printout.

Mr. Cline – That's what I'm saying though, it's not on your photocopy, but it is there.

Chairman Maier – OK, so how much can you move it back and still get the five foot setback and mitigate some of the variance from the road?

Mr. Cline – And still attach it? Like six feet.

Mr. Nearpass – I looks like it's half, it looks like it's 12.

Mr. Cline – Well, maybe.

Mr. Nearpass – If you look at the cellarway, it's right at the four in 24. Again, this isn't an engineered drawing so I don't want to give you a number and it ends up being two feet off.

Mr. Harter – Would it be helpful to call time out?

Mr. Nearpass – That's what I was going to suggest.

Mr. Harter – Have him take a closer look at this and whether he can push it back and mesh in with that...

Mr. Nearpass – I would personally like to see what some other reasonable options are.

Chairman Maier – Or an explanation of why it can't be accomplished.

Mr. Cline – Why what can't be accomplished?

Mr. Nearpass – Anything else.

Chairman Maier – The garage moved back.

Mr. Reinhardt – Do you have an architect, an engineer, somebody *that can give us something*, with all due respect, other than a sharpie that's on a piece of paper.

Mr. Cline – No, I do not. It was \$3,000 on an educator's income, I did not want to put that out there.

Mr. Reinhardt – Ok, whenever this project moves forward, how is this garage going to be constructed? Is it going to fall out of the sky? Is there someone that is going to put a stamp on a building permit that says yes, this is good to go? What's the next step?

Mr. Cline – A building permit application.

Mr. Reinhardt – When you turn in the building permit are you going to use the same set of sharpies and pens and give it to Al just like that?

Mr. Cline – No, I have drawings of the building itself.

Mr. Reinhardt – There we go, who made the drawings?

Mr. Cline – I did.

Mr. Reinhardt – OK, and who is going to construct it?

Mr. Cline – I am.

Mr. Reinhardt – The whole thing, from going to Lowe's and getting the 2" x 4"s, cutting them, putting it up.

Mr. Cline – I've built numerous houses, yes.

Mr. Reinhardt – Maybe it might be a good idea if you spend a little bit of money and get an engineer and say this is what I want to do, could you help me get this variance. Probably, most engineers have been around the block a few times and know quite a bit about variances. Probably he or she can help you on here is what you need to show the Board. Here is the drawing. Here is what they want to see. It can't go anywhere else but here. You're asking us to try and visualize your dream and quite honestly we're missing a number of puzzle pieces and we're having a hard time figuring the thing out. Help us find the puzzle pieces and you might...

Mr. Cline – Again, I'm asking you what is it that you want? You want me to tell you why it can't go back farther? There is a tree in the way but you said that's not your problem. If I put it back far enough, I can't meet the rear setback. If I put it back in the middle, I put it in the middle of the yard and not have any yard.

Chairman Maier – So what's your happy medium? Are there other alternatives.

Mr. Cline – There aren't or I wouldn't be asking for this sir. If I thought there was a reasonable alternative I would have done something different so I wouldn't have to come to you for a variance.

Chairman Maier – Why did you pick that spot and not six feet farther back.

Mr. Cline – Because the tree is in the way.

Chairman Maier – Ok, I don't see the tree in the way.

Mr. Cline – Go back to the photograph. The tree is in the way. If I go back six more feet, I'm going to have to cut part of the tree away. It's not my tree. I can do that but I don't think my neighbor is going to want that done. I'm trying to make everybody happy. I don't know what else to tell you.

Mr. Reinhardt – Is it possible if we ask him, stake out where you want the garage and we can go out and take a look at it and visualize and maybe we can understand why it is that that garage can't go anywhere else, or maybe we could see that it could go somewhere else.

It seems like we have a bit of a dog and pony show where we are chasing our tails and I understand what you are saying, but I think the Board is having trouble with there needs to be some proof to the matter, other than just you saying it can't go there.

Mr. Cline – No, it can, it is just not.... I don't understand why I have to put it in the middle of the backyard.

Mr. Nearpass – I don't think anyone has asked you to put it in the middle of the backyard. Five feet away from the property line and back maybe another 24 feet is what I heard last. That barely puts it to where your deck is.

Mr. Cline – It puts it beyond that.

Mr. Nearpass – No, it puts it right to where the deck is.

Mr. Cline – It most certainly does not.

Mr. Nearpass went up to the plot plan that was projected and showed where it would put the garage.

Mr. Cline – It puts it beyond the back of the pool.

Mr. Nearpass – It goes to about where your deck starts and the garage would go to there where the framed shed used to be. You've got a whole yard over here. I don't see that it's encroaching on the middle of your yard. I know you said that repeatedly but I'm just not seeing it. If this goes back 24 feet it wouldn't be attached to your house, that's the downside.

When you keep saying, throwing that card down, that we are asking you to put it in the middle of your backyard, I'm just not buying it.

Mr. Cline – So if I move it back 24 feet and I put it back there, and I take out the tree out of the neighbors' line, then everyone is OK with that?

Mr. Nearpass – I'll only speak for myself, I think that if you move it back 24 feet and you were able to conform to the five foot side setback, I would personally be OK with it. I agreed with what Scott was talking about. If you moved it back 24 feet, you were OK with the five foot setback, to me that sounded like a good and reasonable compromise. It's still 50% of the variance of the front setback.

Mr. Harter – It agrees with the rear setback and it agrees with the side setback.

Mr. Nearpass – And it is a lessor impact to the front setback. To me that is a much better compromise against the criteria that we have. Yes, I would be OK with that.

Mr. Reinhardt – To summarize, you would deny the three foot side setback and grant the 48 foot front setback.

Mr. Harter – We're talking five feet to the overhang, right?

Mr. Nearpass – Whatever Al measures it from. Scott is that what you proposed, because that is what I thought I heard.

Mr. Harter – Yes, I was just clarifying the five feet. Yes, that is what I threw out as a starting point, middle point, ending point, not quite sure.

Mr. Nearpass – To me then the variance isn't substantial because you are greater than 50% to the front; you are adhering to the side now; the site is more in conformance but it would still require a variance. I'm also OK if you said, let me take a couple more weeks until we meet again and come up with a couple more options so that we don't have to rush and make a decision tonight on something that you might not like or might not be physically possible. If you want to come back and at the next meeting, go through options.

Also, in all fairness, this is a typical debate we have with almost every single homeowner that comes in front of us; whether it is a shed, a pool, a sign. Honestly, we treat everybody equally on this, so I don't want you to feel like you're not getting a fair shake. It's just a debate and negotiation that happens between us and the applicant. We're here trying to prove that we are minimizing any impacts to the law, period.

Mr. Nearpass spoke to Mr. Valenti in the audience and told him he thought he needed to be on record.

Mr. Anthony Valenti of 1296 East Victor Road addressed the Board.

Mr. Valenti – I'm his neighbor. I have two questions. The construction of the building, is there going to be a foundation like a regular garage, is it going to be a pole barn, do you address that at all or who addresses that?

The water runoff that is going to come, I realize that he accommodated the front and back, but those gutters that are going to take the water or whatever kind of water that is going to come off there where is that going to go?

Chairman Maier – Those are good questions. We don't have an answer.

Mr. Nearpass – Is that the building permit process? It's usually not us that gets into that.

Mr. Benedict – As far as the design, whether it's a pole barn or a typical foundation, there is nothing in the Code that requires one or the other.

Mr. Valenti – Well, do you know what it is right now.

Mr. Benedict – I haven't seen any plans.

Chairman Maier – In terms of gutter or no gutters, that's not something that we would get into and Al, I don't think it's a requirement from the building department either, is it?

Mr. Benedict – Certainly we would ask what is going to be done regarding water runoff; what is being done for grading; how water (*inaudible*).

Chairman Maier – There are issues. If he puts a foundation in there, a poured floor, he's got excavation and what do you do with the spoils. That may impact a water flow, where the water goes, but we don't get into that. That would be the Building Department.

Mr. Valenti – So there are rules that Al is going to follow?

Chairman Maier – Yes, and again, the setback rules, there are a lot of reasons for them. Setbacks from the road are for future utilities; future road widening; esthetics. There are many reasons for them. The same thing with the side setbacks. It's also safety, safety for you, if they widen the road to make sure you have enough room to pull in and out. There are a lot of reasons for setbacks that we don't need to go into. The side setback, again, is partly for esthetics and also for

practical reasons including the runoff. That's why I said, in residential areas, unless there is some other way of mitigating the water, Scott may convince me otherwise some time down the road, but I'm not a big fan of the five foot setback.

Mr. Harter – I think the five foot setback is actually a benefit to the applicant because I think it gives him something very close to what he wants.

Chairman Maier – It is to the applicant, but I'm just saying for residential development, it's kind of hard to do stuff in five feet.

Mr. Harter – It's also a part of this whole strange zoning district that we have been ferreting through that's more geared to commercial than residential, but that is what it is. I agree with all the comments the Board members have made and I think if I were the applicant it might be handy to consider that option that we discussed or maybe come up with another option and be with us again. I likewise don't want to rush into a decision unless the applicant wants us to.

Chairman Maier – Mr. Cline we can table this discussion, we can vote, or you can withdraw it.

Mr. Reinhardt – If he wants he can amend his application. He can say instead of the 24 foot front setback, I want a 48 foot front setback.

Chairman Maier – Tonight, yes, I was just saying if you wanted time to think about it, those were your options. If you wanted to amend it tonight you could do that also.

Mr. Harter – Historically we have had many applicants under situations like this ask for an adjournment, take two weeks and think about it, and come back. Sometimes that helps a lot.

Mr. Cline – I had six months anyway.

Mr. Reinhardt – It might help if you were willing to stake it out so we can take a look at it and see where it is where you want it.

It took us 50 minutes to figure out that that garage, where you wanted it, was attached to that stairwell area. 50 minutes to figure that out. 50 minutes is a long time.

Mr. Cline – For you to figure it out, I'm sorry.

Mr. Reinhardt – I watched the clock and it was 50 minutes and it finally occurred to me that you were pointing to an area and that's where you wanted it attached to.

Mr. Cline – Because someone made a photocopy you couldn't see it on.

Chairman Maier – We do get plans where we can see everything and where there is description.

Mr. Cline – I turned ones in where you could see everything.

Chairman Maier – So I'm saying, this is what we were working with.

Mr. Cline – I really resent the way you speak to me.

Mr. Reinhardt – I'm trying to get to the point that it is taking a long time and I'm trying to help you. If it gets staked out, so we can see, we're both on the same page, where it is where you want this garage to be; why the tree is an impact; where the pool is; instead of a drawing that doesn't have sufficient measurements and specifics to where it is that you want everything. These are estimates, they are not accurate.

Chairman Maier – The other thing you can do too, if you'd like, I'll go ahead and read through the correspondence we have and then we can vote. We can vote right now if you'd like to do that.

Mr. Cline – Yes, but then when you vote it down, what does that leave me?

Chairman Maier – It leaves you with your application has been denied.

Mr. Cline – Right, so I can't reapply for it.

Chairman Maier – So do you understand what we're trying to do for you?

Mr. Cline – I do understand what you are trying to do.

Mr. Nearpass – We're trying not to reset the clock a year for you. My recommendation, my own personal recommendation, take two weeks, think about it, don't do something in haste. I know you've said you had six months, but you didn't have six months thinking about this you were thinking about the other thing you were successful about.

Mr. Cline – I've been thinking about it longer than that, since I bought the house two years ago.

Mr. Nearpass – I'm talking about other options. This is the first time we've asked you to move the location of the garage. This is the first time we've even all talked about it.

Mr. Cline – I guess I'll take the adjournment because that's really my only option.

Mr. Harter – I think it's a wise option. I think it's wise for you to think about the things that have been said and it give the Board time to think about it as well.

Chairman Maier – If you do happen to stake it out and stake it out reasonably accurately, notify Debby if something changes so that we can get a change to get out and take a look at it, should something change.

Mr. Harter – Now, is this subject to Site Plan?

Mr. Benedict – No.

Chairman Maier – It's under 1,000 square feet.

Mr. Benedict – Unless he's going three stories. Is it single story?

Mr. Cline nodded his head that it was single story.

Chairman Maier confirmed with Mr. Cline that he was adjourning and kept the Public Hearing open.

### **DECISION - BOARD VOTE**

1. GORBEL INC.  
600 Fishers Run  
17-Z-2016

Secretary made errors on the resolution approved on July 18, 2016 granting Gorbel Inc. an area variance to place two monument signs within the Gorbel campus, 18 feet from the pavement of the public right-of-way. The Zoning Board of appeals will vote on the corrected resolution.

Mr. Nearpass – What was the mistake in the resolution?

Chairman Maier – The incorrect setback to the right-of-way was written into the resolution. Now what we have to approve is a modified resolution.

Ms. Trillaud – I wrote from the right-of-way in most places instead of from the pavement of the right-of-way.

Mr. Nearpass – OK, and what we had all agreed to was from the pavement?

Ms. Trillaud – In the minutes you all agreed to the pavement.

Mr. Harter – Just as an FYI, typically we call it edge of pavement. If we're not calling it right-of-way, we call it edge of pavement. Sometimes pavement is a little too broad.

Chairman Maier – For the purposes of this, Scott?

Mr. Harter – I would just substitute in the word edge of pavement instead of right-of-way.

Chairman Maier – OK, 18 feet from the edge of pavement. Al, is that OK?

Mr. Benedict – Correct.

Chairman Maier – Al had picked it up.

Mr. Harter – So do we then vote to make that amendment to the resolution, is that what we do?

Chairman Maier – That's correct.

The Board was in agreement and it was unanimously voted that the resolution be amended with the correct wording. The amended resolution is as follows:

WHEREAS, after approving and issuing the area variance resolution regarding the Gorbel monument signs on July 18, 2016 it was noted that the variance request was incorrectly stated for monument signs 18 feet from the right-of-way, whereas the request actually was for the monument signs to be 18 feet from the pavement of the public right-of-way (edge of pavement); and,

WHEREAS, at the September 19, 2016 meeting of the Zoning Board of Appeals it was unanimously approved, without a public hearing, that the amended original resolution which follows this paragraph shall be reissued to correctly state the intention of the applicants request as was evidenced in the record of minutes from the July 18, 2016 meeting; and,

WHEREAS, a condition has been added to this resolution with the intent of clarifying the necessity of applying for a building permit; and,

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 pavement of the public right-of-way (edge of pavement), 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; 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 pavement of the public right-of-way (edge of pavement):

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 pavement of the public right-of-way (edge of pavement), 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 BE APPROVED:

AND BE IT FURTHER RESOLVED that the following conditions are imposed:

1. Building permits are required for work including, but not limited to, erecting structures, placing signs, pools, fences, mechanical systems, etc. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Planning and Building Department.

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. Nearpass – On other topics; remember the sign by TGI Fridays and Panera and McDonalds, remember when they were all sharing the same monument sign? Of course, if you've noticed, they took out the Panera sign like we asked, but they just left it open. It's just like a big white bright light. Now my gut tells me that there is probably no law against that, but if you just go down there it's just a big rectangular oblong where the Panera sign used to be. It's like four or two fluorescent lights in there. Can they block it out?

Mr. Benedict – I believe it was blocked out before.

Mr. Harter – It should be blocked out like the other ones, right?

Mr. Nearpass – That’s what I was thinking. Maybe something just fell.

Mr. Benedict – I’ll look into.

On a motion by Keith Maier, seconded by Matthew Nearpass, it was unanimously agreed and RESOLVED, that the meeting was adjourned at 8:08 PM.

Debby Trillaud, Secretary