A regular meeting of the Town of Victor Zoning Board of Appeals was held on October 3, 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; Michael Reinhardt; Mathew Nearpass; Donna Morley

OTHERS: Al Benedict, Code Enforcement Officer; Councilman Dave Tantillo; Jason Cline; Anthony Valenti; Jim & Tracy Armstrong; Ben Chudner; 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 Donna Morley,

RESOLVED that the minutes of September 19, 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

OPEN PUBLIC HEARING

1. 1308 EAST VICTOR ROAD (Tabled at the September 19, 2016 ZBA meeting)
   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 Requirement

   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.

Mr. Jason Cline addressed the Board. The microphone was not on so a summary of what he said is written until the time the microphone was turned on.

Mr. Cline stated that he had brought in three different options for the placement of the garage and that he had placed one stake at each distance to show where each of the three placement options would begin on his property. He hoped that the Board members had a chance to see the stakes.

Option one is the same option he presented at the September 19, 2016 meeting, a 24 foot front setback, however it shows the five foot side setback that is required by Code. The garage is now proposed to be narrower at 20 feet wide instead of 24 feet wide. The drawing also shows the grade measurement; this option would only need a slight grade adjustment of about10 inches. Mr. Cline also wanted to mention that the drawing shows the 24 foot front setback is still 10 feet beyond the front of the house. So it is still10 feet past (behind) where the front of the house is. This option also allows the garage to be attached to the house similar to other garages in the neighborhood. This option has the least effect on the tree that is behind the proposed garage; only a few limbs would need to be taken off.

Mr. Cline – The second option, option two, which shows a 31 foot setback and is 17 feet back from the front of the house also shows the five foot setback on the side to accommodate that. It also shows that there is a 21 inch decline from the front of the garage to the back at that point which would need to be built up. It isn't huge but it still is more so than the first option. This option, 31 feet, also allows me to connect the garage to the house which is one of my objectives so that it has some sort of connection to the house and completes the attached garage as in other houses.

The third option, which is the one you had asked me to look into is a 48 foot setback from the right-of-way. That becomes a 34 foot setback from the front of the house. It does not allow the garage to be attached to the house and it also requires a 31 inch grade increase in order to bring it up to the driveway height. While it is five feet from the fence and approximately four feet from the trunk of the tree that sits there, whether or not it would have any impact on the tree itself – I wasn't able to get an arborist in such a short time to be able to look into that. It does cut into the backyard as we talked about at the last meeting, but again, I find that for me having it up toward the house and attached to the house is more desirable and more in line with the rest of the houses in the neighborhood.

I did attach some pictures in case some of you weren't able to make it out to look at the property. You will see the first picture on the upper left is where the garage would go. I have a temporary covering there right now just so that I can keep my motorcycle under cover. The picture on the left is where you can see that the grade drops off.

(Another set of pictures) The one on the upper right is actually the house next door to me. You can see that that has an attached garage that is up even with the house. The one across the street, while there is no garage, you can see the house itself is up close to the road and the one on the other side of me, the commercial property, you also can see that the building itself is up next to the road. All of them are less than 15 feet from the right-of-way.

Ms. Morley – I don't have any questions at this moment.

Mr. Harter – The first two examples that you presented, the cellar entry, when you attach the garage in those two scenarios, how will you handle the drainage between the structures? How will the drainage flow when the two buildings are connected?

Under existing conditions right now the grade drops off to the west and so when you connect a new building, as you are doing, I guess the question I am asking is, drainage, where is it going to go? Existing drainage, for example, is located on this drawing where I see the word "chimney". In that particular area you've created a blockage, a dam if you will. So where does drainage that gathers in that area go under that particular scenario? That's my question.

Mr. Cline – Not to simplify it, but down. Only because it's only about four feet wide at that point. Four feet by about 17 feet, which is a flower bed.

Mr. Harter – Let's take option one – let's say option one is the choice and you build it exactly as you show on the paper here and you take a 50 gallon drum of water and you turn it upside down right before the word where it says "cellar entry"; where does the water go? In this climate you have the potential of melting snow, rainstorms, etc. I guess I'm trying to indicate to you that you are potentially trapping drainage when you connect the two buildings together. There certainly is a way to take care of it. You can put in some sort of drain system. I guess that's what I'm leading to in this, is that you may want to give it some thought because you are going to be trapping drainage if you do either scenario one or scenario two to a certain extent as well. Not in scenario three. So that's my question, my comment.

My other two comments are that I think that what you have done is very much more helpful and what we needed tonight. Your additional photographs and options have made your situation a lot easier to understand for myself and I think the Board as well. I think reducing the width of the garage is a good thing, as you have done, so that you maintain the five foot setback, which I think is helpful with respect to the drainage that I just mentioned and also in terms of access. You've outlined the tree and I can see from what you have presented to us how the tree affects these particular options and I don't think that was clear to us at the previous meeting. The last comment that I have is that I think the tree that you have photographed here is substantial and it is healthy and I think an arborist would say that as you push back you do influence the roots of that tree and you could adversely impact it. Those are my comments.

Mr. Reinhardt – I'm reflecting back on the last meeting we had and I'll ask the question again, who owns the tree? What I am rather curious about is the photograph that you presented, that looks to me like the majority of the tree is on your property. How is it that it is not your tree?

Mr. Cline – That's a good question. To be honest with you, we've spoken, as far as I know the fence is his (Mr. Valenti's) too. I purchased the property. He purchased his property about the same time as I purchased my property. It doesn't say on mine that the fence belongs to me, nor does it say that the tree belongs to me, so I'm not really sure. The line really does go straight down through the tree. I believe it to be his.

Mr. Reinhardt – OK, if it's your understanding that it's not your tree, but to Scott's point, it appears if you push that garage farther back, whether trimming that tree, trimming some branches, the farther back you go the more concern you are going to have regarding influencing the integrity of that tree. Do you know what kind of tree it is?

Mr. Cline – I knew you were going to ask that too. It's an Elm. A friend of mine works for the DEC. She was over last weekend and she said oh that's a…and I can't remember what she said it was…. (Someone in the audience said Box Elder). Box Elder, that's what it is, it's not an Elm.

Mr. Reinhardt – A Box Elder, any idea on the health of that tree?

Mr. Cline – That one is quite healthy. One of the trees in the backyard is not so much.

Mr. Reinhardt – I too appreciate the options you presented, options one, two, and three. The photographs are very helpful as well. Those are all the questions I have.

Mr. Nearpass – I agree, I think the drawings add to the application. We have these options here, which option are you saying Zoning Board, this is what I want to do? We don't like to get into the engineering of the site for you; is it these are three options I'm OK with or I really only want option one and two, and option three is the crazy one that shows look how ridiculous it looks if we push it all the back. To me the drawing shows that which is what I was looking for last time, so thank you for putting it on paper. So are you OK with option one or option two?

Mr. Cline – I would prefer, the less the setback, the better for me. If you look at the drawing and you see the shaded area, that's already compacted crush and run stone driveway which makes for a great base for a garage. The farther back I push it, the more I have to dig up and replace with crush and run stone, compact it down to make a suitable base for a garage. That's why I was trying to keep it up closer because it actually is more suitable to build on. The third option is not really one that I would prefer. You'd mentioned the 48 foot front setback so I wanted to draw that up to show you the difference between them.

Mr. Nearpass – So my opinion is I'm OK with option one and option two. There has been no push back from the neighborhood. I've seen nothing but support for the project. In addition I appreciate that the applicant has reduced the size of the garage such that he will meet the side setback so there is only one variance required. In my opinion I'm OK with option one or option two as proposed.

Mr. Harter – I just wanted to add a little information that dovetails into Mike's comment. On the survey drawing that was submitted, there are distances shown along the property line that contain the tree. The measurements 0.0 and 0.0 and 1.2 and 0.1, those are all measurements the surveyor took from the property line to the fence. The arrows indicate in what direction the fence is. So where it says 0.0 four times that means that the fence is right on the line.

Chairman Maier – That portion of the fence.

Mr. Cline – I was wondering what those little numbers were.

Mr. Harter – Well, there you go. I just wanted to put that out there. My comment would be, to his particular point, that option one does create less impact in terms of impervious area. He's adding less impervious area with option one than with the other options.

Chairman Maier – Alright, I'm going throw a curve ball. I was out there today and took a look at it. Certainly 24 feet is doable, I understand the impervious surface issue. I think that 31 feet is certainly doable. I'm not an arborist but I don't think it's going to have a significant impact on the tree. The branches that need to be cut, I don't think it's significant. In my opinion putting it farther back is not feasible or not as feasible. The additional grading you would have to do, you are going to have spoils from the excavation. You said you are going to put a concrete floor in and I think that the additional excavation is minimal; I think the amount of crushed stone that you would have to put in is a toss-up. In my opinion I don't think it would add that much expense. I would propose that if we are considering putting it farther back than the 24 feet that is requested that we go with 30 feet rather than 31 feet. The reason for that is that at 31 feet you are very close to your entrance way. I don't know if you are going to have it surveyed or not before you build it. It at least gives enough buffer that you don't have to worry as much about the setback. Where that 31 foot stake is, if you move it a foot forward it gives you enough play that you can still tie into the garage and set it back. I don't know if that influences anything but I don't think it's going to have an impact on the tree based on the excavation you have to do. As a matter of fact I think it might work out better for you; for the backside what you can do with the spoils, and what you can do with channeling the water, things like that, I think will be more beneficial for you. I think it's kind of a trade-off. I know where the tree is relative to where the front stakes were, and I think if you did 30 feet you would still be safe.

Chairman Maier asked the Board members if they had a preference for option one or option two.

Ms. Morley – I have a preference of option one, 24 feet.

Mr. Harter – I would say option one is OK, but I would restate that option one traps the drainage there at the cellar whereas option two does not.

Chairman Maier – Right, and it just gives you a little more flexibility. You still tie into the garage and you are only adding six feet of impervious surface which is not too significant and you are not going to pave it right now or are you going to pave it?

Mr. Cline indicated that he was going to pave the driveway.

Chairman Maier – OK, it adds six feet.

Mr. Reinhardt – I'm curious on the drainage issue. Is it an A-frame garage? (Yes) Is it the same slope as the cellar entry or is it going to be at a 90 degree angle to that? Do you follow my question, is it the same peak or are you going to turn it so it's 90 degrees to the cellar?

Mr. Cline – It's the same peak as the house, which is what I wanted to do to make sure the water wasn't shedding to the neighbor's property. It's taking all the water and running it to the front and the back which I think, to what Mr. Harter was saying, if we do that then I think drainage to run the water along the side and out to the back, from the front, if the front driveway is paved….

Mr. Reinhardt – Will there be gutters on the cellar entry?

Mr. Cline – That short segment right there, yes.

Mr. Reinhardt – Scott, maybe I'm not following, how is the difference between the 24 feet and the 31 feet, if there are going to be gutters both on the garage and cellar entry, how does that impact the drainage.

Mr. Harter – I think the gutters help control the roof drainage but for land drainage for surface water from rain and snow and such, if it lands on…

Chairman Maier – The grading goes all back to the garage. Where he is tying into is a walk down, it steps down. So where you are tying into your house, those steps go down.

Mr. Cline – They do, but it is built up with block.

Chairman Maier – I understand that, but the problem you want to take a look at, that Scott is trying to help you with, is you're going to have all the snow off your driveway, all the rain, that is going to want to go to the west, to your backyard. By moving it back you are able to take more water off that roof and easily get it to the backyard. By moving it forward you make it very difficult. You have blocked that run-off with your house, your entranceway, and now the garage. To mitigate that, I believe I know what Scott is talking about, you help yourself by a half by moving it back a little bit. I don't know about the calculations, but I understand what Scott is saying.

Mr. Harter – I would say that if you would just go with option one, you would probably be looking at some kind of catch basin that you would need to put in that area where the word "chimney" appears with a pipe proceeding to the west and then daylighting or connecting to your foundation drains to the west. Maybe I can look to Al to see if he knows what I'm talking about.

Mr. Cline – I haven't had anybody look at actually putting the paved driveway in yet, but my guess is that in front of the garage, given that the roof line comes down, that's going to require a drain across the front built into the pavement.

Chairman Maier – Scott's correct, it could be very serious. The water that you are dealing with really wants to go one way. You're going to want to figure out how to get it to where it ultimately wants to go. Because of the way your lot is laid out and the size of it, and the setback, now you only have five feet. You're taking a lot of water off one side and steering it down that five foot area, it's not hard to do, you put the gutters in, but on the other side you still have your driveway. You want to take the water off the driveway and wherever you are going to put the snow, and that's going down that five foot section on the side of your garage. By moving your garage back a little bit there is less water, sometimes it could be substantially less water that you may have to deal with. The consequence of not routing it directly means that you could have a flooded basement, you could have a flooded garage, what else Scott, what other good news?

Mr. Harter – Those are all possibilities but I guess the benefit of this conversations is, and from the last meeting when Al said you were not going for site plan review, this is kind of an informal

mini site plan review of sorts. It can be dealt with by virtue of a drain, just so you are aware of that. With that information in mind is option one still your preferred option?

Mr. Cline – It is my preferred option.

Mr. Reinhardt – What I'd be more concerned about, only through my experience, is the farther back you go, the more the tree is canopying over the structure. My experience has told me, a few times, that gets problematic with ice storms and things like that. You can do some trimming and whatnot but I would defer and I think I'm in Matt's camp, I'm fine with either way, option one or option two.

Mr. Nearpass – I'm OK with either one. I'm assuming if we approve option one, he can also decide to do option two if he wants to push it back. I'm OK with option one.

Chairman Maier – Let me open the discussion to the public, if anyone has any comments or any statements they would like to make.

Councilman Tantillo – Since I was here at the beginning when Mr. Cline first presented his project to you, this is the first time I am looking at all this information that you folks just saw. Here are some comments based on the information and being on the stormwater management committee for the Town. With regard to adding six more feet of impervious surface, per the stormwater committee, not good. I want more grass, less driveway, so option one appeals to me more. Also, the farther you go back, I concur with Mike; the way trees work is that wherever the branches are that's where the roots are. When you bring the garage back, it's not just trimming the branches above, you are going to disrupt the root systems, so with option two and option three you really put the tree's life in jeopardy. Not only will you have issues with the rain coming down but there is a potential, if you destroy the root system, you then run the risk of not only damaging his property but the tree may fall on the neighbor's property – then who is at fault? The last comment I have is with being consistent with the character of the street. When this issue was flipped back to the Town Board to take a look at the rewording of the rezone we did have a public hearing and no one complained and there were no comments against it. Mike Guinan who has been here for decades made a good comment, that when you build and add structures, make sure that it is consistent with the character of what is on that street. So if the houses and the garages are 10, 15, or 20 feet from the road and then you ask someone to go 30 feet from the road, that's not consistent with the character of the street. Those are my only comments, I would be in support of option one.

Chairman Maier – Thank you. I'm going to read the comments we have from the Ontario County Planning Board. "The local Board is encouraged to grant the minimum variance necessary". Let me start from the top. "As of 2005 69% of the parcels in Ontario County were classified as one or two family residential. Between 2000 and 2005 2,018 residential parcels were added to the County's tax rolls. Collectively individual residential developments have significant impact on surface and groundwater. Proper stormwater and erosion control is also needed to achieve that same end". The final recommendation: "The Board will make no formal recommendation to deny or approve".

Chairman Maier read the public letters that were sent in.

To whom it may concern: I am the owner of 1312 East Victor Road. I have discussed the proposed garage, deck, and pool plans proposed by Jason Cline to be constructed at 1308 East Victor Road. I do not feel they will adversely affect my property and I support the variance. *Robert Brien*

To whom it may concern: I have no problem with the addition to his property of a garage, pool, and deck by my neighbor at 1308 East Victor Road. *Charlotte Kupper*

I live at 1324 East Victor Road, and owner of 1322 East Victor Road. I am aware of the variance request submitted by Jason Cline for the garage, deck and pool at 1308 Ease Victor Road. He has discussed this with me, and I am in support of granting him the variance. These changes will not adversely affect my property. *Steven Galante*

Chairman Maier closed the public hearing and read the resolution.

RESOLUTION:

WHEREAS, originally an application was received by the Secretary of the Zoning Board of Appeals on March 4, 2016 from Jason Cline requesting three area variances for his property located at 1308 East Victor Road, Victor, NY 14564, to build an attached garage and erect an above ground pool with a deck, whereas the property is located in a Commercial-Light Industrial Zone and §211-3A of the Town of Victor Code had originally indicated no structure shall be altered or used for any purpose other than as permitted in the district in which such building is located; and,

WHEREAS, the single family residence existing on the property existed prior to the current zoning, whereas §211-3B(1&2) originally stated that a nonconforming use existing at enactment of the Code may be continued however, no structural alterations or enlargements are permitted; and,

WHEREAS, a Public Hearing was held on April 4, 2016 at which time this area variance application was tabled and the Zoning Board of Appeals suggested that the applicant, Mr. Cline, had a discussion with the Town Board to see if they would entertain a proposal to rezone the district or alter the Code; and,

WHEREAS, at the May 16, 2016 Zoning Board of Appeals meeting, application, 2-Z-2016, of Jason Cline was given a 120 day extension of time until October 2, 2016 for the rendering of a decision in order for Mr. Cline to go before the Town Board; and,

WHEREAS, on June 27, 2016 the Town Board held a Public Hearing for the purpose of adopting a local law to amend the Victor Town Code in order to permit prior nonconforming single and two-family uses in Commercial, Commercial/Light Industrial and Light Industrial Districts to have customary accessory uses and structures; and,

WHEREAS, on July 25, 2016, the Local Law 2 of the year 2016 for the Town of Victor, cited in the above paragraph, to amend the Victor Town Code at Chapter 211-3B and 211-24C(8), was adopted and has since been filed with the New York State Department of State.

WHEREAS, structural alterations or enlargements are now permitted to prior nonconforming single family homes in a Commercial/Light Industrial District, the applicant is requesting one area variance; and,

WHEREAS, the applicant requests a 24 foot front setback for a garage, whereas 80 feet is required per Schedule II Part II- Area and Height Requirements; and,

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on September 11, 2016 and whereby all property owners within 500 feet of the application were notified by U. S. Mail; and,

WHEREAS, the Ontario County Planning Board referred the application back to the referring agency on March 31, 2016, referral number 50-2016. Using an administrative review process they determined that the application is exempted from the County Planning Board review requirements and stated that they will make no formal recommendation to deny or approve the application; and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act per Sections 617.5(c)(10) and 617.5(c)(12) and therefore does not require further action; and,

WHEREAS, Public Hearings were held on September 19, 2016 and October 3, 2016 at which time one resident spoke regarding the application and three letters were received in favor of the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact to allow the construction of a garage with a front setback of 24 feet:

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 garage is behind the front setback of the house; there are other dwellings on the road that have similar setbacks or setbacks that are closer to the road. The existing structure has a setback that is less than the proposed garage setback.

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 impact on the stormwater drainage and the existing tree that is in the way hinders other options. Based on the analysis of the options the front setback of 24 feet that was proposed seemed to be the most feasible of the three alternatives presented.

3. The requested area variance is substantial.

   Justification: The area variance is substantial relative to the required setback, however, the justification is that of the three options proposed for placement of the garage, the 24 foot front setback seemed to be the most feasible option.

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 proposed 24 foot front setback versus other alternatives mitigates most of the impacts whether physical or environmental, within the neighborhood or the district.

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.

<u>DECISION:</u>

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

NOW, THEREFORE BE IT RESOLVED that the application of Jason Cline, requesting to place a garage with a 24 foot front setback at 1308 East Victor Road, Victor, NY 14564, whereas 80 feet is required per Schedule II Part II- Area and Height Requirements, 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	Aye
Donna Morley	Aye
Mathew Nearpass	Aye

Adopted 5 Ayes, 0 Nays

NEW PUBLIC HEARINGS

2. ARMSTRONG – SHED SETBACK
   1370 New Seabury Lane
   Appl. No. 22-Z-2016

   Applicant is requesting an area variance to place an 8' x 10' shed one foot from the side property line, whereas Schedule II, Area and Height Requirements, Part I for Residential Districts requires a 15 foot side setback and more specifically §211-20C states that accessory structures, such as storage sheds, must observe a 15 foot property line setback on residentially zoned property.

Chairman Maier opened the Public Hearing and the secretary read the legal notice as it was published in The Daily Messenger on September 25, 2016.

Mr. Jim Armstrong, 1370 New Seabury Lane addressed the Board.

Mr. Armstrong – Do you have the pictures that I sent you? OK. So three years ago I bought a shed and said OK, where is the best place on the property to put it. I had no clue that there was a law saying that you need a building permit first and secondly that there is a 15 foot setback. Based on that, I put it in that area because it made sense. First of all it is a relatively level area, second of all, there are no trees. The rest of my backyard up near the woods is trees. Thirdly, it looks great there. Fourthly there is septic down the hill. So it's not so easy to put it where that swing set was or is. It was a cost benefit to put it where it is, and then again, I had no idea that there was a rule, and dumb me, there is.

In our defense, my wife Tracy and I, it's the same color as my house. It's all of eight feet by ten. You can't see it from the road. My neighbor is fine with it. As we both discussed it before I even put it up and visa versa. It's a financial hardship to move it. I don't think you can just pick that up with a crane and put it somewhere else on top of the site work. My guess is, as it was put together by me, assembly, my guess is, it is done. It's firewood. That's my guess, I'm not an

expert. For me to buy another one, put it 15, 16, feet from where it is, after just paying our school taxes; I'd rather not spend the money, $2,500 or $3,000 for an error in judgement. Those are the reasons, that's why I put it there, and I don't know what else you want me to say in the scheme of things. It's a little shed in somebody's yard in Victor that I can't change and I wish I could.

Chairman Maier thanked Mr. Armstrong and asked the Board for their comments and questions.

Ms. Morley – Does this shed have electric to it?

Mr. Armstrong – It does not.

Ms. Morley – I was on your lot, so looking at your picture that you have on here, where the property line is on the shed, to move it to the right so it met the 15 feet, there is a tree there. Am I correct?

Mr. Armstrong – That is correct. There are trees Donna all to the North, and to the right. There is a pretty good incline there, so it's not the easiest thing to do, if anyone can do it. I don't know who could pick that up and move it and if you take those things apart, they're not…how do you put the roof back on top? It's not an easy thing, I don't know how to do it.

Ms. Morley – Is there a stone base underneath it or is it just dirt?

Mr. Armstrong – It is a stone base with four by fours. If I'm not mistaken there are three of them. You set it on top and then you put the floor on. You put the shingles on. It comes in a kit, but you have to buy other things to complete the kit.

Ms. Morley – Thank you, those are all the questions I have.

Mr. Harter – So the photograph that is up on the screen, the structure to the left is the shed in question?

Mr. Armstrong – No, I'm the one to the right and somewhere you have a picture of what it looks like from the road. You can't see it from the road. Keith was at my house earlier today and as he moved into the backyard he said, where is it? Again, it made sense to put it there.

Mr. Harter – The shed is not on a foundation then, it's on four by fours?

Mr. Armstrong – Yes. It's on four by fours.

Mr. Harter – Just as comment, I have seen sheds like that moved using low lifts with forks, pick it up, move it over, drop it down. That's just a comment.

Mr. Armstrong – Yes, you could be right. I don't know who does it or what they charge.

Mr. Harter – Another question I have is are you here tonight because of the other application next to you and this was discovered as part of that zoning variance? How was it that you came to the meeting here tonight, what brought you here?

Mr. Armstrong – I got a letter that said if you don't do something, we're going to take it down, so I acted on it.

Mr. Harter – OK, I'm just curious because it seems so hard to see.

Mr. Benedict – We went to do an inspection on 1374's shed and then we noticed the one on 1370 at the same time. I figured it was best to address both of them at the same time.

Mr. Reinhardt – Clarification, you haven't gotten any estimates on moving it, is that right?

Mr. Armstrong – I wouldn't know who does it. No, I have not.

Mr. Reinhardt – So you don't have any idea how much it's going to cost to move it.

Mr. Armstrong – No clue. Nothing is cheap, I'm going to say it's $2,500. $2,000.

Mr. Reinhardt – Where did you get that number from?

Mr. Armstrong – In my head.

Mr. Reinhardt – How did you base the $2,000?

Mr. Armstrong – Well, site work for a new site, cutting the trees down, and putting new crusher on, leveling it out is an expensive endeavor, as well as someone coming in with a large truck, emptying it off, moving the shed, is extensive. I don't know what extensive is.

Mr. Reinhardt – So that's a three year old shed? (Yes) How much did it cost you to build, materials and all?

Mr. Armstrong - $2,500.

Mr. Reinhardt – So that's where you're getting your numbers from on what it costs to move, put the stone in, whatever work needs to be done to move it, that's what you're basing your opinion on?

Mr. Armstrong – No, I'm basing my opinion on site work. Site work is not cheap. Cutting trees, leveling it, putting dirt, not only leveling the site but making it so you can drive your little garden tractor up there. What does that cost? I don't know, that's not cheap. I'm going to say that's $800, $1,000, I have no idea but it's not cheap. The second one is, what would it cost someone to come in with an apparatus, pick something up and move it? What does that cost for a few hours? That's expensive I think.

Mr. Reinhardt – We're on a fact finding mission here, we're trying to figure out what it is to move it. My understanding is that you don't know. You haven't gotten the contractors, you're guessing on what it is going to cost to move it. It's your best guess.

Mr. Armstrong – That is correct.

Mr. Reinhardt – How do we know that that shed is on your property?

Mr. Armstrong – On my property?

Mr. Reinhardt – Right, because if I look at Al's comments, he had some difficulty determining where that property line was and if it is within a foot (Yes), how do you know that that is in fact on your property?

Mr. Armstrong – There is a stake in the back, that if you eye it up with the road, or where I think it is in the road, it goes along that line.

Mr. Reinhardt – Any idea if that shed is in a conservation easement?

Mr. Armstrong – What is a conservation easement?

Mr. Reinhardt – Al, is that shed in a conservation easement?

Mr. Benedict – No it is not.

Mr. Armstrong – What is a conservation easement sir?

Mr. Reinhardt – It is a piece of property that is determined by the Conservation Department in the Town and depending on what kind of Conservation Easement it is, it's a forever wild kind of

area that you are not permitted to build on there. Sometimes you are not permitted to take limbs down. You can plant there but you cannot take any of the trees, shrubs, whatever the existing wildlife that is there. Is that fair enough a description?

Mr. Benedict – Close enough.

Mr. Armstrong – Are they in our neighborhood?

Mr. Reinhardt – I don't know if they are in your neighborhood, but there are many conservation easements throughout Victor. That's all I have.

Mr. Armstrong – OK, I never heard of it.

Mr. Benedict – That subdivision was developed prior to the Town declaring conservation easements.

Mr. Nearpass – I'm taking a little different angle. If you were here in front of me and there was no shed, there is no way I would support it being one foot away from the property line, especially with the data that is in front of us right now. There really isn't anything that shows me that it couldn't be two feet over, five feet over, or really within the15 foot that's allowed. Just cutting down a small tree, it's expensive in my opinion, but it's not something that you would not do if you had to put a shed in your yard. Is there any evidence that you have that says you just couldn't, other than, I know you say it's costly, but to me the cost is really on you because you put the shed there not knowing what the law was. If I take that cost out, and there wasn't a shed there at all, I know we don't have it, but what would really be the cost difference in being compliant with the Code or being six feet, two feet, one foot away from the property line. To me, one foot is just awfully close, I don't know how I would support that.

Mrs. Tracy Armstrong addressed the Board.

Mrs. Armstrong – Obviously we made an error, we fully understand that, so we stand before you. It is without question, it's on us. If we had to do it over again, we'd do it properly. It is his best guess and you have to make a decision based on whatever you have to make a decision on.

Mr. Nearpass – I'm not holding it against you that the shed is there, but if you were like any other applicant that came in front of us and said….. I mean we would all like to put our sheds one foot by one foot in the far back corner where nobody can see it, but there are laws that say we can't do that. We either need to be 15 feet or in the other applicant's case, his was five feet because of the area he was in. If we need it to be closer for some reason, whether there is a large tree or there is a grade, and there is some substantial reason that relates to the five criteria that we

have to provide an exception to the law, what do you think that would be in this case? I'm just one vote, but I don't know what I have to support it if it's just a mistake. If I just make a mistake, myself, I fix it and I'll pay for it, and it might cost me $1,000.

Mr. Armstrong – We'd have to cut about five trees down.

Mrs. Armstrong – It's not that simple. We didn't just say let's put it on the closest end of the corner of our place because you can't see it. It is an expense to cut the trees down. You (Chairman Maier) were there, you saw the trees, Donna saw the trees.

Mr. Nearpass – I see a very large backyard. I don't see very large trees. I see areas without trees.

Mrs. Armstrong – One second though, what you need to understand is that we are dealing with a septic.

Mr. Nearpass – I just don't have anything that shows me where the septic is. I need an engineered drawing or something that shows me this area is where the septic is. We can estimate and guess all we want but if we are just going to say my entire backyard is the septic, I don't know how I can….

Mrs. Armstrong – So we have to come back and provide other things for the Zoning Board, we're certainly….

Mr. Maier – Let me raise another issue. I'm with Al, I'm not a surveyor. I was out there and I did a quick line of sight from the stake in the back to roughly where the transformer is. There is a hedgerow and that hedgerow looks like it angles off the property line. As we move you can see that the hedgerow angles off the property line. Where that front corner is, our right bottom; that front corner by the driveway; it looks like there is a transformer there. Normally, the transformer straddles the property lines. If I did a quick line of sight to that transformer, there is the possibility that that shed is sitting on the neighbor's property. That would be information that is very important to the Board because we can grant you a five foot setback, ten foot setback, if it is still over the property line, I'm not saying we would, but if we granted a setback and it was still over the property line, you would still have to move it. That is a critical piece of information that we need to have.

Mr. Reinhardt – At some point in time. There are a number of different variables that I believe need to occur. If that shed is in fact on the property line, it's either the sale of the house that's going to force it to be moved or you have a neighbor to say you are encroaching on my property, move it, but if you have happy neighbors you can conceivably have that shed sit straddling a property line for some period of time until something happens.

Mr. Nearpass – Until Al sends the letters that you are in violation, right.

Mr. Reinhardt – I believe what the Chairman is trying to get at is if you grant a variance for the one foot, that's all fine and good but it doesn't help you if that shed is in fact straddling that property line. Someday, something needs to be done with that shed. I think that's the point you're trying to make.

Chairman Maier – Right, at some point it has to be addressed. There is a cost to addressing it. I'm not going to get in to it. I think there are other alternatives, not knowing where the septic system is, there are other alternatives to relocate it. I do not know what the cost would be and I'm not going to speculate.

Mrs. Armstrong – What I also wanted to tell you, what you can't see, is there is a complete downgrade along that back line as well. There were a lot of factors that went through our mind when we placed the shed. Obviously it wasn't the right thing to do but, here we find ourselves. I guess you'll tell us what we need to do.

Chairman Maier – I guess the hard part is we have to have justification. We have to have justification to grant whether it's one foot or five foot, etc. The justification for a one foot setback doesn't really apply that well if it's over the property line or on the property line. We need justification, as Matt said, why you want a certain setback. One foot was because you assumed it was one foot from the property line and we don't know that.

Mr. Harter – To follow up on what you just said, I think the application that came in before you, that gentleman was here two weeks ago and I think we had a similar discussion with him. He's not here any longer, Mr. Cline, but he presented us with three different options tonight relative to our questions. He provided justification to us as to why option one was the option he preferred and we reacted to that as you might have observed. I think we're asking you for the same sort of thing, if I understand it correctly. We understand the predicament you are in; we understand the situation; now we would like, in order to make a decision, some factual information relative to slopes; your septic system; trees; what's constraining you? What's keeping you from making this conform to our Code? That's what we are seeking in order to make our decision. I don't know if we have rendered a firm decision or opinion at this point because we really need to know that information.

Our charge is to minimize the variance we grant. In other words we're not supposed to, if you will, give more than what is justified. For example, if you could do 15 feet without any difficulty, we wouldn't technically want to grant you the variance, but if you come back to us and say the septic system is in the way, there are trees in the way. I contacted a contractor and he can't move the thing for less than $10,000. If you give us all that information, in some sort of

digestible form as the applicant did before you, then we have enough information to render a decision. I think that is where we are coming from.

Mr. Reinhardt – Just a little bit more, we are charged with five criteria. Just running down them quickly – an undesirable change, this is my opinion, would not make a difference, I don't see that. The other members of the Board should chime in as well. It is far back in your yard. When we look at the benefit sought by the applicant, to me, can be achieved by some other means. The area variance is substantial. Then I go to the fourth criteria, has an adverse impact to the physical environment, no it does not. So, I'm on the fence right now. You need to push us, if you will, and persuade us, convince us, that it needs to be there. Some of these criteria, because they are a bit of a grey area, get some clarity for us so that we can understand the predicament that you are in and possible grant the variance that you are looking for.

Mrs. Armstrong – Obviously this is our first time here, it's a little bit of a daunting task, particularly watching what the gentleman went through right prior to us.

Mr. Nearpass – That was the nice meeting actually.

Mrs. Armstrong – That's just an observation, I give him a lot of credit; he had a lot of stuff going on. We wouldn't have known that if we hadn't come.

Chairman Maier – There is a significant challenge here. As Matt said, if you were just coming in, again you would have to prove it, but it looks like you have a lot of space to work with. So you've got to prove that you can't work within that space. The other is the fact that it may be sitting on the property line. If you ask for a five foot setback or a ten foot setback, you've got to justify it because right now, I'm just letting you know, it looks like you may have parked it on the property line or over it.

Mr. Nearpass – The challenge I have is that it's not like a house that is there or a garage that is fully built and we can all just say the costs are substantial to really move it. The reason why in my mind I take off the table the cost to move shed, is that well then everyone can just put a shed wherever they want. Then they can just come in here and say, well look it's going to cost me money to move the shed. If that is the sole reason that we use to say, OK this shed can stay where it is because it costs you $800 or $2,000, I just don't know how that is fair to the community or even fair to the rules and regulations that we have. I personally need to see more than that, as if you were coming here and the shed wasn't there.

Mr. Armstrong – OK, so what do you need, help us out. What do you need, the specifics, please help me out.

Mr. Nearpass – In my opinion, I'd like to see an engineer's drawing or some kind of drawing that shows where the septic system is.

Mr. Harter – That should be on file with the Town, it should be something similar to this instrument survey. There was a subdivision map that was done for your project when it was first approved.

Mr. Nearpass – I personally would like to see some other options where you could put it and be within Code. Again, I look at it and you do have a lot of area to play with. Maybe if I see the map and it shows the septic system and then a lot of options are taken off the table. Then it's like one of those moments where, that just makes sense, it's OK where it is even if you didn't have it built it there, we would say to put it there. To me one foot is just awfully close, but a good example was the prior applicant, where the garage wasn't there yet. He actually had to make the garage a little narrower. And we were talking about five feet being so close, but that's actually what is allowed in that particular area. If you can get cost estimates, the more data and more facts that you had would support it. Again, I'm looking at it, there are probably areas where you wouldn't even need to knock down trees to put the shed in.

Mr. Armstrong – Don't you have any other pictures.

Mr. Nearpass – Yes, there are a lot of pictures.

Mr. Armstrong – There is a picture that….

Mr. Nearpass – I see all sorts of space, maybe it's 20 feet from the ….

Mr. Armstrong – Oh gosh, those are all trees up in there.

Mr. Nearpass – Again, I see a lot of space even in these pictures. I don't if anyone else…

Mr. Armstrong – I'll get better pictures, because those are woods.

Mr. Nearpass – I'm looking at them. Ok, for example, where the trampoline is.

Mr. Armstrong – That's the septic.

Mr. Nearpass – So I don't know that. That's the thing I don't see in the picture.

Mr. Armstrong – How far from the septic are you allowed to put something? What is the setback from the septic?

Mr. Nearpass – I don't know.

Mr. Harter – Ten feet.

Chariman Maier – I think there may be space; I think you want to take a look at that. The other question is if it's on the property line, you know like Mike said, it still has to be moved or taken down. It's going to be an issue at some point. Quite honestly, if you are going to move it ten feet or 12 feet, you may as well move it 15 feet.

Mr. Nearpass – I don't know if someone has to shoot a line down there, I look to Scott for this stuff.

Mr. Reinhardt – I think the danger that comes when you eyeball things and assume, it's a logical sequence, the more you assume, the more premises you assume, the worse the conclusion gets. So if you are assuming that that box that you are basing it on is straddling the line, it's going to make a difference in fact, if that box is all on your property or if it's on your neighbor's property. And a stick, I've seen far too many times that I'd care to admit, sticks move. You need a permanent, there should be some monument to base where that property line is.

Mr. Armstrong – So let me ask the question, because I don't know. You said something would have to be done sometime. Is that your call?

Mr. Reinhardt – You know that's a legal question.

Mr. Armstrong – Yes, and I'm asking you.

Mr. Reinhardt – We're not here to provide you with legal advice.

Mr. Nearpass – Right now you are here because you got a letter from Al that says you are in violation of the Code.

Mr. Reinhardt – Is it your call if it is on the property line? I'm not trying to be argumentative, I'm just curious.

Chairman Maier – It think the thing that we can tell you is that it's not appropriate or prudent to build on somebody else's property.

Mr. Armstrong – Oh, absolutely.

Chairman Maier – You can take that however that gets addressed. I think Mike was saying is that if you close, perhaps, that something might get flagged.

Mr. Nearpass – The point I'm making is that the compelling event that brought us all together tonight was a letter from Al that said you are in violation of the Code. Please seek a variance or move your shed. If we all walk away and do nothing, it's up to Al and Code Enforcement to determine if he is going to pursue other actions or if he is going to close the file and put it back on the shelf. I can't talk to that.

Mrs. Armstrong – I think when you say something is going to have to be done sometime. You say that. I'd rather have to do it when I'm 75 years old and ready to move myself out of there. Take the whole shed down, it lived a great life; or if Ben (neighbor) decides to sell his house and a new person coming in says he doesn't want it there.

Mr. Nearpass – I get it; right now the shed has to move unless we do something.

Mr. Armstrong – So it's not an option that something has to be done sometime, that's not even an option.

Chairman Maier – Even if we granted a one foot setback and it's over on the neighbor's property, you still could leave it … but….

Mr. Nearpass – I think you're still going to end up in violation of the Code and Al is going to send you the nasty letters and whatever he does next is up to the Code Enforcement Officer, it's not up to us. What I'm saying is that you have been cited for being in violation and we are all here to try and remedy it.

Mr. Armstrong – So these four things: An engineer's drawing; cost estimates; where is the septic; and then the property plan.

Mr. Harter – The site plan that I think Debby can get you, should be on file with the Town that should identify where the septic area is. There should be an as built on it.

Chairman Maier – Is it with the Town or Ontario County?

Ms. Trillaud - I looked and I gave him the plan that we had.

Mr. Armstrong – You need a topo map as well.

Chairman Maier – And then, why it can't be put someplace else.

Mr. Nearpass – What other options? If I put it here, this spot is compliant with the Code, but why that is a really extremely high cost or a detriment to the environment, those type of things.

Mr. Armstrong – That's the cost estimate, right?

Mr. Nearpass – The more data, the more facts that you present the better.

Mr. Reinhardt – It even could be that you have somebody that may say it can't be moved because the building, the structure will be destroyed if you move it. That's valuable information. We don't know all these pieces. We have a lot of these moving variables. We cannot base our decision on granting or denying a variance with so many unknowns.

Mr. Armstrong – OK

Mr. Harter – Can I just say one thing relative to the property line. There is another application we have yet to hear before us, I think it's the neighbor. Is that correct?

Mr. Armstrong – Yes.

Mr. Harter – Perhaps for both applications they can establish this common property line by way of a surveyor and maybe splitting the cost for the surveyor. That way everybody would have confidence in the result and the analysis. Just a suggestion.

Mrs. Armstrong – I'm trying to figure out, when you buy a piece of property, you have it surveyed, he (Mr. Armstrong) took care of all this, I did not, so this is why I'm asking. You file your plans and so we already went through that process, right? So I'm trying to figure out, where does that live?

Mr. Reinhardt – Did you have an attorney represent you for the closing? (Yes) There should be closing papers. There should be a survey attached to all those closing papers. That is where I would recommend starting. Don't go to the County. You're not going to find what you are looking for there. You'll find tax maps there but the information that you want is contained and attached to those closing papers.

Mrs. Armstrong – So if we get this from our attorney, do we have to go get a surveyor, to come and pay a surveyor if it already lives?

Mr. Nearpass – It might show the corners, but it's not going to show where your shed is relative …. You're going to need someone to show you…an engineer to come out and say where the

shed is in relation to that property line. My opinion, and correct me if I'm wrong, just looking at a document isn't going to do it.

Mrs. Armstrong – I'm just trying to figure out what is the point then? I don't get it. Not your point, but in general.

Mr. Harter – First of all you're correct in thinking that this bridge has already been crossed before. It was crossed when this instrument location map was filed.

Mrs. Armstrong – Then it was crossed again when the owner before Ben crossed another bridge, right?

Mr. Harter – The quick solution as I see it is to contact the surveyor of record, who in this case happens to be Schultz Associates, because they have all the property information and ask them if they would help you establish this common property line by putting physical makers along it. Once you have the physical markers along there you can string a line between them and then measure over from that string line to wherever the structure may be for either of these applications. Then you will know whether you are on the property or not.

Mr. Nearpass – You're saying, as the applicant, that it is a foot away from the property line. However, the map that you showed us, shows that the shed is actually on the other side of the property line. If this is all the data I had…..

Mr. Reinhardt – I caution, it's a different map.

Mr. Nearpass – It's the only thing I have that shows me the survey map and the structure.

Mrs. Armstrong – Or we walk away from this and think it's too much and we just take the dang thing down and we call it a day.

Chairman Maier – We can't speak to that. What happens after this, it's up to the Town, it's up to your neighbor or your future neighbor or whatever happens, we can't speak to that. We have to weigh the facts that we've been given and that's what we are trying to help you with. It really comes down to facts. I think you have three options. We can vote tonight; we can table the public hearing and the discussion to a later date to give you time to put together whatever you want; or you can withdraw your application. Or you can table it and then withdraw your application. You've got some options in there.

Mrs. Armstrong – Who decides on the options?

Chairman Maier – You do.

Mrs. Armstrong – I think I would like to table it, if Jim would and you're OK with that.

Mr. Armstrong – You're doing great Honey, keep going.

Chairman Maier – You can think about if it's worth pursuing. You can do whatever you need to do, but I think those are your options right now.

Mrs. Armstrong – I think like anything else, you walk away and then you come back and take a look at the shed and you say, OK, now I understand where you are coming from.

Mr. Nearpass – I think it's in everyone's best interest, and even the next applicant, let's just have a common denominator of facts so that we can say ah, it is a foot, or maybe two feet.

Chairman Maier – And there really is no place else to put it because there is a cliff there or something else that prohibits it from being there. The cost, doesn't hurt, but…

Mr. Reinhardt – And it sounded like you were talking about a swale in the backyard. If you go back to your closing statements, there very well could be some kind of restrictions, because I know from experience, sometimes there is a restriction that says, you cannot build in this swale.

Mrs. Armstrong – We'll look.

Mr. Reinhardt – Because it is for a purpose. If you have that it is another bit of information that we can have to then say we can't put this anywhere but pretty much right where it is. Or maybe it can be moved. As I said earlier, there are so many variables that are grey and unknown that it makes our job very difficult to guess at what you are asking for.

Mrs. Armstrong – Right, and then when we come back, because we really did made a good expert decision, we will all…*inaudible*

Chairman Maier – So we will leave the public hearing open and the application has been tabled until a further date. How long can we leave it open, is there a limit?

Mr. Benedict – You are limited to 62 days.

Mrs. Armstrong – So we come back here in two weeks, is that what you said?

Mr. Reinhardt – Our next meeting is in two weeks.

Chairman Maier – You can come back within 62 days, if you don't come back within 62 days, you have to reapply, is it that Al?

Mr. Benedict – It becomes a denial.

Chairman Maier – Automatic denial then.

Mr. Nearpass – We meet twice a month so our next meeting is two weeks from now. We're just saying you have 62 days but if you want to move as fast as you can you can be back in front of us in two weeks.

Ms. Trillaud let them know she would send them an email with future meeting dates.

3. CHUDNER – SHED SETBACK
   1374 New Seabury Lane
   Appl. No. 23-Z-2016

   Applicant is requesting an area variance to place a 10' x 16' shed six feet from the side property line, whereas Schedule II, Area and Height Requirements, Part I for Residential Districts requires a 15 foot side setback.

Chairman Maier opened the Public Hearing and the secretary read the legal notice as it was published in The Daily Messenger on September 25, 2016.

Dr. Ben Chudner addressed the Board.

Dr. Chudner – Well I started this process after Mr. Armstrong had his shed on his property. When we put our shed on the property we were made aware from friends that we may need to have a permit, which turned out to be true. We went and applied for a permit and that's what started this whole process and obviously they saw the shed on Mr. Armstrong's property.

If you want to go to the pictures that we have. We had to do, actually, quite a bit of work to put the shed where we put it because of the slope in the back. We chose, similar to Mr. Armstrong, the least sloped area in the back, but even then we had to have it graded. There is crushed stone beneath the shed. We had it built up and leveled. I had it professionally done. Behind the shed there is actually a drainage, a swale that goes behind the shed so that the water that comes off the hill behind our house drains into there and goes off to the right side of the shed which actually goes right along with our drainage line of the property.

What you couldn't see in the photos from Mr. Armstrong's property, and those were winter photos so it makes it look a lot less dense in terms of the trees, but along our back there should be another photo which shows that along the whole back property there are quite a few

trees. Certainly we have a lot of property; they are one and a half acre lots. The same with my neighbor, we could absolutely put the shed farther down the hill into our backyard but one of the things you asked, I forget the exact words, but if that affects the esthetics or physical and environment conditions of the neighborhood. I think putting a 10' x 16' shed in the middle of my backyard, where we have no fences and all the neighbors have a sight line from our property all the way down, I think that would affect the esthetics of the neighborhood and that's one of the reasons I put the shed where it is. As you can see there is actually a tree right there. It is absolutely a small tree, it can be taken down, I get that, but that was the reason why I put that shed there.

Odds are if I did apply for the permit prior to this, I'd be applying for the same variance and not tear down trees in my back yard. I've got a feeling I'm going to get some of the same questions. I don't know exactly where the property line is. I was there when Jim measured it and sighted it, but I realize that that is not necessarily as accurate. I'm pretty sure that I'm within my property line and I think it's within the six feet. I thought it was closer to eight feet.

Mr. Reinhardt – I think we have the same type of problems. The prime moving target that we have is that we are not really sure where the property line is in relation to the shed. That's one problem. The other is do you have a septic system as well?

Dr. Chudner – Yes, the septic is on the drawing, well, now I have a pool back there which wasn't there in the original drawing which should be going through the permit process.

Mr. Nearpass – Which drawing is the septic on?

Mr. Reinhardt – I'm not seeing the septic system.

Dr. Chudner – The Schultz assessment, does it not have septic on it?

Mr. Reinhardt – This one, want to help me out here, where the septic system is then.

Dr. Chudner – You guys have it, I got it from you. I literally got the exact same photocopy every time I've done this with you, because when we put the pool in we had to do the same thing. Either way the septic is not an issue, I mean from where it is along the back property line. I can move it, I can regrade the property and move it closer to the house because it would have to go closer to the house if I were to move it to the left of where it is.

Mr. Reinhardt – Just to stay on the same page, it's the same drill, you don't have any estimates on moving it….

Dr. Chudner – I don't have written estimates but the delivery charge was over $1,000. It's a $5,000 shed. I'm guessing to move that, to have the same people come out, which would have to be, to move that shed, it's going to be roughly a $1,000 for their time and the travel to come from where they would. To regrade the property would be another $1,200 which is what I paid, plus the drainage, and then removal of any trees. That I can't tell you, I don't what trees would cost to be removed.

Mr. Reinhardt – To stay on the same page, it's your best guess and I understand where you're basing it from, but having either something in writing, saying I've talked to the contractor. It very well could be that once it is there it can't be moved. That's a valuable piece of information. Or if this is how much it's going to cost to move it from here to here and the drainage, etc., valuable pieces of information.

Mr. Nearpass – Did it come in as one piece?

Dr. Chudner – Yes, it was prebuilt. It's an Amish shed they deliver it prebuilt.

Mr. Nearpass – Similar questions in terms of what I'd like to see, just some of the options where you could put it and be in compliance with the Code or what that looks like and costs associated with it.

I know you say it is six to eight feet and it leads to the common property line. Six versus eight….at least if it's eight plus you are less than half of what the side setback is allowed at, maybe it is a little less substantial than being right on the property line. I think it would be to your benefit to figure out where that line is.

Ms. Morley – I don't have anything to say. I think we've covered all the areas and he understands what he needs to bring back to us.

Mr. Harter – I have a question, I think you mentioned line of sight along the side and you said there was no fence. I'm looking at the neighborhood on an aerial photograph here and I'm curious, are there deed restrictions against fencing in your neighborhood?

Mr. Chudner – I have no idea if there are restrictions against fencing, other than pool fences which several people have but there are no fences in-between the properties.

Mr. Harter – Pool fences are controlled by the State Building Code, but many subdivisions, including the subdivision in which I live, have deed restrictions on fences and prohibit fences. Just looking at your subdivision here it looks like you may have the same thing. It would be something that would go along with your deed. It would be a piece of information, like the other

pieces of information we've asked about tonight from the other applicant because I think that factors in the decision also.

Mr. Reinhardt – That's an apples and oranges problem. We should not be influenced by neighborhood deed restrictions, unless you are going to pin it directly to it changes the character of the neighborhood.

Mr. Harter – The way I look at it in trying to come up with my opinion is if I knew that a fence were not allowed there, there wasn't a possibility, that would affect the way I look at this application, that's how I see it, that's all. That was my question.

Dr. Chudner – Out of curiosity, I'm not following why that would have a bearing on the decision.

Mr. Harter – For example if there was a potential fence that could be constructed at some time in the future at either of these locations, in my mind, that would affect access. One of the things that we looked at in the first application tonight was the five foot setback that the individual was requesting next to a fence line because is narrows the corridor of access for emergency vehicles. That sort of thing. For me as a member of the Board that's an item that I consider when I cast my vote. I think it's just a piece of information, along with the other pieces of information that have been mentioned to the prior applicant, that's all. I think the gist of all this is, as with the first applicant that appeared here tonight, that if you can just give us some information from which we can draw a decent conclusion, I think we can wrap this up.

Dr. Chudner – It's just an interesting comment about access when you guys have stated multiple times that we can put this anywhere on our property because we have so much space back there. That even if a fence was there, there would be no restriction of access because we can go to the other side of the shed to get around it, but I get what you are saying. It's just an interesting comment.

Mr. Nearpass – I think he's talking about access without encroaching on somebody else's property.

Dr. Chudner – Access to what, because that gets wide open?

Chairman Maier – Access to your accessory structure. So what happens with a one foot setback, it's kind of hard to paint it or work on it without encroaching on somebody else's property or if you wanted to mow around it, how do you do that? If work needed to be done in the back. There are some practical reasons why you have the setbacks. I think that is what Scott is saying. In the situation for the first application is if it were a three foot setback it would be very difficult. I

think you can see that if he wanted to get something into his backyard, it would be very difficult to do. It's going to be very hard to do with a five foot setback on that one side. It does have a bit of an influence.

Ms. Morley – And you are friends now. Sometimes people come in that aren't friends anymore.

Dr. Chudner – I get that, I just wanted clarification.

Chairman Maier – And the variance is permanent. So if it is approved, it's permanent. That's one of the reasons we are careful with it.

I think the issues are the same. Where is it really relative to the property line? Why can't you put it someplace else? What are the impediments to that? I think that's it.

You've got your three options. We can vote…..

Dr. Chudner – We'll table it.

Chairman Maier – Ok, table it, thank you.

Mr. Nearpass – Do we have anything that shows the pool?

Chairman Maier – I think we have a picture. I don't know which application it was, but I think we show a picture with a pool. Am I mistaken?

Mr. Nearpass – I didn't see anything supplied with a pool.

Dr. Chudner – The pool permit is in process.

Mr. Nearpass – When you come back it would be great if either the pool was drawn on it or the location of the pool on the property is identified, obviously telling us you can't put the shed there.

Mr. Harter – I have one more question before you go. Was I correct or incorrect in assuming perhaps that the property line is common to you both or are you on the other side of the property.

Chairman Maier – It's common.

Mr. Nearpass – So the sheds are like ten feet from each other.

Dr. Chudner – Yes, give or take. Al, you would know better. Thank you.

Chairman Maier – We will leave the public hearing open and table the application to whenever they come back in the 62 day timeline which still applies.

Chairman Maier – There is one other item. Let me first state that we enjoy and appreciate having Al at all of our meetings. Al you can participate in this discussion too. I don't know if you know this …

Mr. Benedict – I enjoy being here.

Chairman Maier – I've been asked if we need Al at all the meetings. I think the best way to express it is that Al's time is very valuable and I believe that the Town is trying to be as efficient as possible with Al's time. So we have certain nights, perhaps like tonight, or other nights, where he is not as needed as normal. I need to give an answer back so I wanted to bring it up in front of the Board and get feedback. I don't need to get feedback tonight, but get some feedback from the Board members, what everybody's feeling is and if we have any issues should it be decided that there are some situations where Al is not required? Would we want to change some procedural issues that we have?

For example if we need to communicate with Al, how would we do that? The questions that we have or we need to communicate with him, questions prior to a meeting, how do we do that? How do we do it as a group?

Mr. Reinhardt – You can't do it through email. You are going to violate open meetings law.

Chairman Maier – These are some of the questions I have. Do we bring it up at the meeting and then allow Al to address it.

Mr. Nearpass – It's similar to when we used to have David or whoever we had before David at every meeting, the Town Attorney. I can't really think of a meeting where we haven't asked Al at least a half a dozen questions. Maybe there was one or so. There was a 17 minute meeting that we had, but I bet we still asked Al a couple of questions.

To me it is valuable to have Al here, especially in terms of I'd have to turn an applicant away and say can you come back in two weeks and we'll have our Code Enforcement Officer here, present, to be able to answer the questions. It just seems like it would delay getting some of the applications resolved. We also generally have some random things that come up, Scott or myself, or anyone, saw something around Town, we have a question about it, and my opinion is that Al is a valuable resource and that if he still wants to he should be at the meetings.

Mr. Reinhardt – I might suggest that if you take a roll call and limit to a yes, I would like him here or no, I don't think we would be encroaching on open meetings law, not stating why, just a blanket do you want Al or not.

Chairman Maier – OK, I understand. I wanted to give everybody time to think about it. Should there be certain situations, what might be the criteria to help determine …? I appreciate everybody's input, that's why we are talking about it tonight. I was asked and I'd rather make it a group decision rather than some one other way.

I will say that in a previous life I allowed the Code Enforcement Office and the Building Inspector not to attend some of the meetings and it was not cumbersome. I made a friend when I did that. That's part of the question, should we decide to move forward with it, in certain situations would we want to make sure that the information we get back from Al is done earlier than we are getting it right now. The information that we are getting from the applicants, would we want a cut-off date that's earlier than the day or the afternoon of …

Mr. Nearpass – I guess Al is still going to have to put in the time to answer whatever questions we have.

Chairman Maier – It's an efficiency issue and I think that ….

Mr. Nearpass – I'm trying to figure out what is the efficiency saved.

Chairman Maier – Money.

Mr. Nearpass – I understand money, but we're still going to have Al spend time answering questions before or after, it's still money.

Chairman Maier – But it's not overtime money.

Ms. Morley – I prefer to have Al at the meetings.

Mr. Reinhardt – There are budgetary issues. You have a finite amount of time and resources. I deal with this. This is the amount of time you have to work with and if we're taking two hours, two and a half hours that means that's two and a half hours he can't spend doing something else.

Chairman Maier – Well, and it can't be worked out. It's not as though he can work 37.5 hours, but I think the other things is let's say we can use him three less meetings a year, or two, again, what might be the criteria? What if we just had one application tonight, what would be the criteria to say Al, we don't need you tonight even if it's an hour or an hour and a half.

Mr. Harter – Well, maybe it's one of those meetings where they tell us where they keep the first-aid kit or something; he doesn't need to be here for that. My comment is that this entire Board is based on the Code of the Town of Victor. Al is the voice of authority for the Town Code, so I

think this is different than the Planning Board for example. The Planning Board doesn't necessarily need to have the Code Enforcement Officer. I think the Director of Development is appropriate for the Planning Board and that is how they do it in most cases.

I think it's critical for either Al to be here or someone from the Codes office. I also think that his presence helps benefit Debby when the applicants are through, as they are tonight, and they come back to the Town tomorrow morning wanting to know this and wanting to know that. I think Al with his technical knowledge helps the administrative person find the information they need. Personally I can't think of any meetings where we haven't had some type of Code issue.

We had a very quick meeting on the lights at East View Mall recently and I looked to you (Al) and asked you if they were dark sky compliant. To me that was a critical question to ask and the answer came back from you, yes. I just think your presence at that meeting helped us make that meeting brief. It was pretty much a done deal after that with the exception of how many poles we wanted. I think the Code Enforcement Officer is integral to the Zoning Board. I realize this conflicts with Monday night football, but I that's what I think.

Mr. Reinhardt – I'm all for continuing the discussion. The way I look at it is we are a quasi-judicial body. An applicant comes in stating their case and the reason why they are here is because Al, much like a police officer, has cited them with you're in violation of the Code. So without the person who made that citation, who is the reason why the applicant is here, it might become difficult. I'm all for that if there is some chime in, does Al need to be here, a simple yes or no, but to me the chances are it's more often than not, such as, very valuable, is that shed in the conservation easement? No, Al knew it; that helped me tremendously. They didn't know, one didn't even know what a conservation easement was.

Mr. Nearpass – To me the default should be that he is here and the exception is maybe someone, the Chairman or whoever, takes a look at it and says we probably don't need Al for this because there is no public hearing and we've seen both of these applicants before and they're coming back in front of us and we've already asked Al questions.

For example if the next meeting is Jim Armstrong and the Doctor, well, we probably won't have any additional questions for Al because we've asked Al all the questions. Al, you can probably watch Monday night football.

Chairman Maier – This is going to be in the minutes, on the record, and what we'll do is maybe discuss it again and maybe there are examples where it might work. We maybe can get some more information from or maybe it's just standard that the CEO comes to all the meetings.

Mr. Harter – We should ask Al too, Al do you think there are meetings that you've attended where you think your attendance was not really needed.

Mr. Benedict – I would say rarely. You guys engage me usually numerous times throughout the night. I'd like to think that my feedback is important to your decisions.

Chairman Maier – I prefaced this whole discussion with that, we enjoy it and appreciate your feedback.

Mr. Nearpass – In addition there are the applicants because Al usually gives the call me maybe sign after the meeting. He can say I understand, I heard all the dialogue and I think it also helps them feel like we are really openly, honestly, giving a college try, to get some of these applications through.

Mr. Benedict – On that note I will share with you that after the last meeting I was asked to call Mr. Cline and try to give him what you guys were looking for; what does going to the Zoning Board mean; what information you are looking for. So I talked to him and I think he provided some good information. Had I not been here at the last meeting I would not have known where you guys were going if I hadn't read the minutes.

Chairman Maier – So we'll talk about it, see if we can get more information and go from there.

On a motion by Keith Maier, seconded by Scott Harter, it was unanimously agreed and RESOLVED, that the meeting was adjourned at 8:40 PM.

Debby Trillaud, Secretary