

A regular meeting of the Town of Victor Zoning Board of Appeals was held on November 7, 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; Ben Chudner; Debby Trillaud, Secretary

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

### **CODE ENFORCEMENT QUESTIONS**

Chairman Maier – We'll start with general discussion. Does anybody have anything for Al or anyone else?

Ms. Morley – I wanted to ask you about that exit and enter signs that Six50 put up.

Mr. Benedict – There are others in the office that saw them and they will be issuing a violation notice shortly. For you Mike, I'm aware that there is lumber in your cul-de-sac (Silverton Glenn) and that will be gone by tomorrow.

Mr. Harter – Al, relative to Six50, they would need a variance to put those signs in, right?

Mr. Benedict – It's my opinion that as soon as you put a logo or your company name on the enter or exit sign that you do need a sign permit, which would then probably need a variance because it's probably in the right-of-way.

Ms. Morley – It's there, right when you pull out.

Mr. Benedict – As a matter of fact I believe Sean is going tomorrow. He'll go the whole stretch (Route 96) and document flags and everything else.

Mr. Harter – It seems to me if that were somehow legitimate, which I didn't think it was, we'd probably see a whole lot more of that proliferating around. I drove by today and this is the first day that I saw it.

Mr. Benedict – Well it just went up today.

Ms. Morley – It was up yesterday afternoon.

Mr. Harter – I think the karate sign looks very nice.

### **APPROVAL OF MINUTES**

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

RESOLVED that the minutes of October 3, 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. 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 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.

Applicant is returning to the Zoning Board of Appeals with two additional options and contractor estimates.

Chairman Maier – The public hearing has been opened and left open.

Dr. Ben Chudner addressed the Board.

Dr. Chudner – We had the property line surveyed. It turns out the shed is actually 11.5 feet and not six feet from the property line. So I'm revising my request to be a three and half foot area variance from that 15 foot setback. I have the official signed document (survey map).

That is a blow-up of the survey (*projected on screen*). The other shed that is shown on there is my neighbor's shed, which you can see was actually on my property line, in fact, over onto my property. He has since moved that shed.

If you go to the next slide, you wanted some option ideas, this is an overhead of the view, that's where the shed is now. I looked at two options, which essentially would be unlimited options after the second option. The first option is sliding it over on the pad it is currently on and the estimate you have shows it was \$2,950 although it would probably be slightly less than that because if you notice when we got the estimate it was based on the eight feet. I reached out to the company with the change and the company said we would save some on materials but for the most part it would be pretty close to that \$2,950 so I didn't get a revised estimate. It's going to be anywhere from \$2,500 to \$2,600 to move it. Then if I put it anywhere else on the property that would make sense it's going to be close to \$6,000. That includes levelling the property; drainage that would be necessary. In this case I don't have to remove a tree, but in the other case I do have to remove a tree. Ideally I would prefer not to spend close to \$3,000 to move a shed that is three and a half feet from the required setback. I can move the shed anywhere on the property and it's going to roughly run about \$6,000 unless I move it farther down on the property where it is already flat. Then we run into my pool and septic and those issues.

Ms. Morley had no questions for the applicant.

Mr. Harter – The only question I have is on the updated survey where it shows the shed, was that your neighbor who was in last week? (Yes) So that indicated his shed was not where it should be and was that the reason why....

Dr. Chudner – No, he chose to move that prior to us having the survey done. At least based on the timeline. The under review sign went down before the survey was done. I actually told him, when I found out he withdrew his application, I told him to wait to move it until we actually have the property line mapped out so that he wouldn't run into the same problem.

Mr. Harter – I don't have any questions. My observation is that you provided us with what I feel is the correct information we need to make a judgement on your application. That's my comment.

Mr. Nearpass – The neighbor is moving the shed so there is no issue there.

Dr. Chudner – Currently it's gone. He removed it.

Mr. Nearpass – To Scott's point, I think I'm OK. You provided us with a couple of estimates. For three feet the benefit to the community or the neighborhood of spending three thousand to move it three feet, I'm not quite sure it's justified. Right now I'm feeling like it is OK where you have it. Without anyone having to do anything other than really just get the facts, like you did, we are a few feet farther away from the property line than when we last met. I'm OK with it.

Mr. Reinhardt – I want to echo Scott's comments. Thank you so much, it puts a ton of clarity on it. I'm fine with the request.

Chairman Maier – I have some questions. Can you give me a little bit of history about the shed? How old it is; approximately what you paid for it; how it was installed?

Dr. Chudner – Sure; you remember, Al, when I submitted the permit because that's about how old it is. It's over a year now. We put it in last summer, give or take, so it's a little over a year old. We paid \$4,800 for it. The Amish delivered it in this amazing truck I had never seen before and put it on the crushed stone that I had built up prior to that. I had an area cleared and then stone put down and drainage put behind the shed. There is a swale behind there.

We have a drainage issue on our properties. So I actually have two sump pumps in my basement. I guess the previous owner had some flooding issues. We have a drainage line that goes along the property as well, so this doesn't tie into that but it puts the water directly in line with the drainage along that side of my property.

Chairman Maier – So the stone and the excavating for the shed was done by whom?

Dr. Chudner – His name was Guy. He's the Household Guy, I think that is literally his company's name. It's a guy I found on Angie's List.

Chairman Maier – And how much was that?

Dr. Chudner – That came out to about \$1,400. I don't have the receipts anymore, but it was roughly around \$1,400.

Chairman Maier – Did the \$4,800 you paid include putting...

Dr. Chudner – Yes, it was delivery and placement.

Chairman Maier – Where I have an issue with this, and I'm not saying it's going to affect the way I vote, is that we asked for an estimate and we got an estimate that costs more or as much as putting the whole shed in. I've seen them put sheds in too. I know they have fork lifts with the big tires. There is also something like a pallet lift that comes underneath with big tires. There are a number of ways that they can put a shed in your yard. Initially taking a look at this when I was out there I figured you could basically hook it up to a tractor and move it relatively easily. I'm going to be honest with you. I look at these estimates and I think that they are a lot more than I would have thought having been out there and taking a look at it and looking at the options that you have.

Dr. Chudner – That was more than I thought it would be too. When you asked me at the last meeting I think I said it would be around \$1,200 based on what I paid before so I don't disagree.

Chairman Maier – Like I said, for \$5,000 you can buy a whole new shed, have it installed and have it all graded. You could actually have two sheds put in. It's three and a half feet; there probably are a few other spots you could put it. I'd be OK with it, putting it where it is. Next time you come in maybe get an estimate that is a little more realistic. That \$5,000 I thought was...

Dr. Chudner – I never would have done the \$5,000. I could have moved the three feet for \$2,500.

Chairman Maier – Or less, they probably could have come in and moved it for you for a lot less.

Dr. Chudner – Just to be fair, I don't think it is all just the moving. There is work that needs to be done. There is grading that needs to be done on the property. There is drainage that needs to be...

Chairman Maier – I understand that you have a big hill that is carrying a lot of water. You probably had to grade quite a bit around your pool. Who knows what it is doing to your septic system. I took a look at it, but it's only a 10' x 16' shed.

Mr. Harter – I would just comment that having 11.5 feet, it's not 15 feet granted, but I think it shows there is a decent separation between the property line and the structure. With the other structure that was there that turned out to be on the property, after all I think maybe there was some benefit to all of this.

Dr. Chudner – Well he won't have to deal with it when he sells his house or I sell my property.

Interestingly enough, just for interest, I did a lot of research to try and find this property line. You had nothing more, we checked with you first, you had one drawing that had one reference point which I think Al used to determine where the line was. Obviously, it's not very accurate, which I couldn't do either. Then I called the County and they didn't have anything. I went back to my records when I bought the house and I had the same thing that you had in your files. We made the comment that we used the rebar, well my neighbor used the rebar, and you made the comment, appropriately so, that those can be moved.

Just so you know when the survey guy came out he used the rebar. He found rebars front and back.

Chairman Maier – I saw a rebar when I was out there. I saw where the transformer was, it's hidden by the bushes, but I tried to do a quick line of sight and it did appear that your neighbor's .... It's hard to measure where yours is relative to the property line, but it did look as though I was looking through the shed to the transformer.

Dr. Chudner – I noticed the same thing and I was hoping, it almost looked like it might have been at 15 feet, but obviously it was less.

Mr. Harter – I think it's good you did what you did. I think we have the facts to work with and the truth of the matter is we're intended to be a lay Board here and we're not capable of really rendering exact property....

Dr. Chudner – Well, now it's official. It's all good. It's a lesson anyway.

Chairman Maier – One of the questions I have for the Board is when we go through this do we want to put any conditions on it? Can we limit the approval to a 10' by 16' shed?

Mr. Nearpass – Yes, in location as proposed.

Chairman Maier opened questions up to the public and there was no one to comment.

Mr. Armstrong, the neighbor had sent in a letter that he was OK with the placement of the shed.

Mr. Harter – And so of the properties within 500 feet of the parcel we received no other correspondence.

Chairman Maier read the resolution.

RESOLUTION:

WHEREAS, an area variance application was received by the Secretary of the Zoning Board of Appeals on September 16, 2016 from Ben Chudner of 1374 New Seabury Lane, Victor, NY. The applicant appeared before the Board on October 3, 2016 and the application was tabled in order for the applicant to get accurate information on the distance from his shed to the property line which was received on October 31, 2016; and,

WHEREAS, the applicant requests to place a 10 foot by 16 foot shed with an 11.5 foot side property line side setback, whereas Schedule II, Area and Height Requirements for Residential Districts require 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; 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 25, 2016 and whereby all property owners within 500 feet of the application were notified by U. S. Mail; and,

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

WHEREAS, a Public Hearing was held on October 3, 2016 and November 7, 2016 at which time no resident spoke for or against the application and one letter was 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 place a 10 foot by 16 foot shed with an 11.5 foot side property line setback at 1374 New Seabury Lane, Victor, NY 14564, whereas Schedule II, Area and Height Requirements for Residential Districts require 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.

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 shed is located in an area of the lot and the subdivision that is not easily seen from the road or the other homes. It is also in a wooded area, so from a visual standpoint the shed is in a desirable location. There was no objection to the location by the neighbors.

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

Justification: The applicant presented information that demonstrated that the shed could be moved but also showed that the cost of moving the shed would be substantial.

3. The requested area variance is not substantial.

Justification: The area variance distance requested is three and a half feet.

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

Justification: The shed is located in an area of the lot and the subdivision that is not easily seen from the road or the other homes. It is also in a wooded area, so from a visual standpoint the shed is in a desirable location.

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.

DECISION:

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

NOW, THEREFORE BE IT RESOLVED that the application of Ben Chudner, 1374 New Seabury Lane, Victor, NY to place a 10 foot by 16 foot shed with an 11.5 foot side property line setback at 1374 New Seabury Lane, Victor, NY 14564, whereas Schedule II, Area and Height Requirements for Residential Districts require 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 BE APPROVED subject to the following conditions:

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.
2. This approval is for the 10 foot by 16 foot shed, as submitted on the Schultz Associates Survey Map prepared from an instrument survey completed on October 19, 2016.

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 5 Ayes, 0 Nays

The dates for the 2017 meeting schedule were discussed.

Also discussed was whether or not a no show by a Board member to a meeting was considered a “no” vote. A ZBA Board member had heard this while at another Town’s Planning Board meeting. The consensus was that this was not correct and would open up the possibility of an Article 78.

It was unanimously agreed and RESOLVED, that the meeting was adjourned at 7:30 PM.

Debby Trillaud, Secretary