

A regular meeting of the Village of Victor Zoning Board of Appeals (ZBA) was held on Wednesday, February 21, 2018 at the Village Hall, 60 East Main Street.

MEMBERS PRESENT: Chairperson Sean Sanderson
Vice Chairperson Brian Pancoast
Member David Chalupa
Member Brendon Crossing
Zoning Clerk Roseanne Turner-Adams

MEMBERS ABSENT: Member Tim Stone

OTHERS PRESENT: Joyce Thon, Glen Thon, Terry Norsen, Doug Eldred, Meg CHaides, Bill Ferris

The ZBA meeting was called to order by Chairperson Sean Sanderson at 7:00 pm.

Salute to the Flag

Resolution #05-18ZBA

Acceptance of Minutes

On a motion made by Brendon Crossing, seconded by Brian Pancoast, the following resolution was ADOPTED 4 AYES 0 NAYS

Resolved to accept the minutes dated January 17, 2018.

Ferris Terrace

Area Variance- Height

Chairperson Sanderson read the legal notice into the record:

"A public hearing will be held before the Village of Victor Zoning Board of Appeals on Wednesday, February 21, 2018 at 7:00 p.m. at the Village Hall, 60 East Main Street, Victor, New York, to consider:

The application of Dr. Bill Ferris, 156 Brentwood Lane, Fairport, New York, for the following area variance:

1. An area variance to allow a building height of 50' whereas 35' is allowed per Section 170-13D of the Village of Victor Zoning Code.

The applicant proposes a mixed use retail/apartment project to be constructed on approximately 2.65 acres, located across from the High Street/Rt. 96 intersection.

The development parcel includes six (6) parcels that will be consolidated into one (1).

Four (4) of the parcels are currently used for single-family residential use and the other two (2) are vacant.

The project is located within the Business Zoning District and the Central Business Overlay District. Sean Sanderson, Chairperson Village of Victor Zoning Board of Appeals"

Chairperson Sanderson then read the letter of referral from Codes and Development

into the record:

"I have reviewed an application submitted by Dr. Bill Ferris for an area variance to allow a building height of 50' for a project in a (B) Business District/Central Business Overlay District per the applicant's description. Section 170-13D of the Village Zoning Code allows for a maximum height of 35'. With that said I believe a variance is needed for this section of the code to achieve the height that the applicant is applying for. If you have any questions please contact my office. Thank you."

Doug Scarson

Code Enforcement Officer

Chairperson Sanderson stated that he has a very lengthy letter from the Fire Department that he will not read into the record but if anyone from the public wants to read it we can make it available.

Chairperson Sanderson then read a letter from Chatfield Engineers into the record:

"I have reviewed the revised application materials dated January 18, 2018. Based upon my review, I have no engineering concerns relating to the height variance. However, the revised site plan submitted depicts site changes including ingress and egress modifications. Revised site plans and related documents will need to be revisited for planning board approval. Please contact me, if you have any questions or concerns. John Paul Schepp, P.E."

Mr. Doug Eldred from BME Associates stated that he is representing Dr. Ferris and that a variance was previously granted for a 44' high structure with a gabled roof. Mr. Eldred explained that Dr. Ferris tried very hard to get a developer/partner but the common theme of the developers has been that the retail component of the project was too big and the number of apartments weren't enough to make it work. Mr. Eldred stated that this has required Dr. Ferris to modify the building and site plans to propose an economically viable project. Mr. Eldred stated that the revised plan in addition to adding a fourth floor reduces the cost of the site development by reducing the overall parking requirements which will open up the east property extension for a stormwater management pond. Mr. Eldred stated that Dr. Ferris has a very interested party if the Zoning variance is obtained.

Mr. Eldred stated that the Village of Victor is proposing a code change that would allow a 50' building height. Mr. Eldred stated that they are requesting a 49' building height, not 50'. Mr. Eldred explained that the current proposal includes a 36' high roof top patio at the road which fits in with the existing neighborhood.

Mr. Eldred presented diagrams of the proposed building showing how it would blend in with the surrounding neighborhood.

Mr. Sanderson stated that what has changed with the site plan is that it went from a gabled roof to a flat roof and from three stories to four. Mr. Sanderson asked if there will still be underground parking. Mr. Eldred stated that there will still be underground parking. Mr. Sanderson asked if entrances and exits have changed on the site plan. Mr. Eldred stated that they have talked to the County about the road coming in off from School Street and are still trying to finalize that location with them. Mr. Eldred stated

that the new site plan eliminates the underground storage which makes room for a pond and some green space with picnic tables and a pool for the tenants.

Mr. Eldred stated that they have spent some time with Fire Chief McAdoo who requested a fire control center to be put in the building. Mr. Eldred stated that they will comply and will follow up with Mr. McAdoo to most efficiently address his other concerns.

Mr. Sanderson asked how the new plan reduces the cost of the proposal. Mr. Eldred stated that the required number of parking spaces went down and the underground chamber systems were eliminated. Mr. Sanderson stated that a pond will be used instead of the underground system. Mr. Eldred stated that it saved a great deal of money.

Mr. Pancoast stated that the previous plan accommodated the Victor Coal and Lumber. Mr. Eldred stated that Victor Coal and Lumber will have direct access and storage and is still part of the plan.

Mr. Crossing asked why 28,000 sq. ft. of retail exposure has been scaled back so significantly to 11,000 sq. ft. Mr. Crossing asked who the tenants were who were anticipated in the 28,000 sq. ft. space. Mr. Crossing stated that he pictured a bar, a restaurant and a grocery store and it being a destination in the Village and would like to know why it is being scaled back so much. Dr. Ferris stated that the developing partners that he talked to were all shying away from commercial as there is a big concern in the development world about Amazon and shrinking sales and businesses struggling. Dr. Ferris explained that he couldn't find anyone comfortable with the grocery element and every grocer that he spoke to view themselves as anchor tenants so they pay about \$9 per sq. ft. and to make this project viable he would have to charge \$20 per sq. ft. so the plan unraveled. Dr. Ferris stated that the trend is to have development that is more pedestrian friendly and residential heavy.

Dr. Ferris stated that the current plan includes a bar/restaurant on the end cap and wants to encourage a pedestrian friendly vibe in the Village. Dr. Ferris stated that a pharmacy is interested and two other retail spaces shouldn't be a problem to fill.

Mr. Sanderson asked if the 49' high building would include mechanical space. Mr. Eldred stated that there will be mechanicals on the roof but mechanicals are not typically included in height.

Mr. Pancoast stated that the footprint of the building hasn't changed but the reduction of first floor retail is going to be absorbed by residential. Mr. Eldred & Dr. Ferris agreed. Dr. Ferris stated that they are trying to add some other amenities such as a pool, a place for grills and benches for residents to enjoy a resort lifestyle.

Mr. Sanderson stated that the original project was a mixed use building with the whole first floor retail and more of a destination with the remaining two floors residential. Now that this building is more like 90% residential he is wondering how it effects the other variances that were granted in the past. Mr. Eldred stated that the other variances are still in effect. Mr. Sanderson stated that he has questions about that since the project has changed and wonders if it is the same project that variances were granted for or a totally new one. Mr. Sanderson stated that he is waiting for some information back from an Attorney as he has concerns about the variance that was granted towards R3 still being valid. Mr. Sanderson stated that the Village Attorney could not comment due to the fact that he represents some of the homeowners so a different Attorney would need to look into it. *Mr. Eldred explained the R3 variance.* Mr. Sanderson stated that he is waiting to hear back from an Attorney to see if the variance is still valid.

Mr. Sanderson stated that he has been involved in the code change meetings and it does look like the code will change to a 50' building height but as it sits right now the code is still 35', not the proposed 50'. Mr. Eldred stated that they designed the front of the building to be a step down at 36' so that the feel at the road would fit in with the existing feel of the neighborhood.

Dr. Ferris stated that looking at the bigger picture and the long term strategy with the code pending if this building goes up it signals to developers that Victor is the place to be and it would become a transformative decade. Mr. Eldred stated that one of the reasons the Village wants to change the code is to spur economic development.

Mr. Pancoast asked if a new traffic study has been done with the increased residential of the project. Mr. Eldred stated that they didn't do a new traffic study because the total number of trips goes down. Mr. Eldred explained that the retail space would generate a lot more traffic than the residential by 15% below the original study.

Mr. Pancoast stated that there is talk right now of the code possibly going to a 50' height as early as the end of April so why seek a variance now. Dr. Ferris stated that it has to do with finances as the homes are under contract until May 10th. Dr. Ferris stated that putting together the financing and the underwriting is a critical next step and a timing issue right now.

Mr. Sanderson stated that the original three variances had a 36 month timeframe to be completed and asked if it is realistic. Dr. Ferris stated that the schedule of events would be to first close on the homes before May 10th and break ground in August with the building taking 12 months for construction. Mr. Chalupa stated that it would go past the deadline of June, 2019. Mr. Sanderson stated that the variances were granted on June 15, 2016. Mr. Eldred asked if that was contingent on a C of O or starting construction. Mr. Sanderson stated that it was to be valid once the consolidation plat has been approved and filed and void if the C of O is not issued within 36 months from June 15,

2016. Mr. Sanderson stated that he understands that time is of the essence for the project.

Mr. Crossing asked Dr. Ferris what his total development budget is and if he is proposing to phase the project. Dr. Ferris stated that the total budget is about 18 million dollars all in one phase.

Mr. Eldred went through the balancing test:

Can the benefit sought by the applicant be achieved by other feasible means?

Mr. Eldred stated that when you add up floor to floor space, 9 foot ceilings for tenants and 12 foot ceilings for retail space it gave the height needed to make the project marketable for retail and apartments. Mr. Eldred explained that in order to achieve the results the 49' height is the minimum amount needed. Mr. Eldred stated that Dr. Ferris has spent two years trying to obtain tenants, partner with an experienced developer and bank the project, and has not been successful therefore there is no other feasible means than to add the fourth floor requiring the height variance.

Will granting of the variance produce an undesirable change in the character of the neighborhood or a detriment to nearby properties?

Mr. Eldred stated that they do not believe that it will produce an undesirable change and by stepping it down in the front to 36' will blend with the existing character of the neighborhood and if the 50' height is eventually approved the future character of the neighborhood. Mr. Sanderson stated that one of the reasons that the height variance was granted was to allow for a gabled roof rather than a flat roof so it would fit in better with the surrounding properties so the new plan is a major change but that it seems like the Village Board is encouraging the 50' height change. Mr. Crossing stated that it could potentially change the look of the neighborhood if what is being proposed is passed. Mr. Crossing asked if the Zoning Board is to deal with the potential change or what is presented today. Mr. Eldred stated that the fourth floor step back roof top patio was designed in conformity with the existing and future character of the neighborhood.

Is the requested variance substantial?

Mr. Eldred stated that numerically it is substantial but it is only 5 feet higher than the variance that was granted with the peaked roof but the most important visual is the front near the road which is 36'. Mr. Sanderson stated that the footprint of the building has less retail than the variance granted. Mr. Eldred stated that they would need to go to the Planning Board to get approval for a smaller retail footprint. Mr. Sanderson stated that the approval was contingent on one of the tenants being a grocery store within the range of 10,000 to 15,000 sq. ft. so how does not having a grocery store hold up the process. Mr. Eldred stated that the Central Business District requirements are at the discretion of the Planning Board and that a revised site plan would need to be submitted to the Planning Board to get a waiver to that requirement and if it's not

granted the project will not go forward because they are not able to meet that obligation.

Mr. Sanderson stated that an audience member looks like he has something to say but stated that he has not opened up the public hearing yet. Mr. Corky Thon from Valentown Road asked if there will be a public meeting about this project. Ms. CHaides stated that this is the public hearing. Mr. Thon stated that he, his Wife and Son own more than four acres of property across the street from the project and that this project makes a difference as to what he is going to do with his property. Mr. Thon asked Dr. Ferris if he is going to have his units priced at \$700 to compete with Great Brook Apartments. Dr. Ferris stated that his apartments will be more upscale. Mr. Sanderson stated that the proposed apartments will be high end like the ones across from Al's Barber Shop. Mr. Sanderson asked Mr. Thon if he was concerned that the apartments would be low rent. Mr. Thon stated that he was concerned that Dr. Ferris would not be able to rent the apartments because he's too high for the market. Dr. Ferris stated that the apartments will be about \$1.43 per sq. ft. and right within the market norm. Mr. Thon stated that the heavy rain last summer created a lot of mud near the proposed project and warned Dr. Ferris that his pond will fill up.

Mr. & Mrs. Thon exited the meeting

Mr. Eldred stated that the requested variance is not substantial in comparison to the variance that was granted previously. Mr. Pancoast stated that when the previous variance was granted the Zoning Board said it was substantial.

Will the variance have any adverse physical or environmental effects on the neighborhood or district?

Mr. Eldred stated that there would not be an adverse physical or environmental effect visually on the neighborhood and that the only other potential physical effect would be related to fire safety. Mr. Eldred explained that the building would be fully sprinklered with a control center in conformance with the NYS Building Code as reviewed and approved by the Fire Chief and Fire Marshal.

Was the alleged difficulty self-created?

Mr. Eldred stated that with respect to adding the fourth floor to make the project viable that the alleged difficulty was not self-created in that sense as they couldn't move forward with the original plan.

Public Hearing

Chairperson Sanderson opened the Public Hearing.

Mr. Sanderson stated that he is going to keep the public hearing open and feels that he needs clarification from an Attorney and the County. Mr. Sanderson stated that the

Ontario County Planning Board did not have a quorum at their last meeting so they did not vote. Mr. Sanderson explained that the comments were the same as in 2016 so in order for him to feel comfortable in making a motion he would like the Ontario County Planning Board to make a vote.

Ms. CHaides asked how the School Street and Adams Street alignment is coming along. Mr. Eldred stated that this was an important meeting so that Dr. Ferris could go forward with his financing and the intent was to have a submittal for the end of March for the Planning Board.

Mr. Sanderson asked when the next Planning Board meeting would be because the next Zoning Board meeting is March 21st. Mr. Eldred stated that his intent would be to submit to the Planning Board at the end of March for the April meeting. Mr. Sanderson stated that he proposes to table the meeting until March.

Mr. Pancoast stated that he would also like input from an Attorney and the County in order to make a decision. Mr. Pancoast explained that the Zoning Board does not deal with speculation and the fact that the building height code might change to 50' doesn't matter. Mr. Pancoast stated that the Zoning Board compares the variance to the current 35' code and the potential 50' height is irrelevant to us. Mr. Crossing and Mr. Chalupa agreed.

Mr. Sanderson asked the board if they are comfortable with tabling the application. The board unanimously agreed to make a motion to table the application. Ms. CHaides stated that it is not necessary to make a motion to table the application if the public hearing is left open because you cannot make a decision until the public hearing is closed. Mr. Sanderson stated that he has left the public hearing open. Mr. Eldred stated that he would like to be able to talk to the Attorney who will be helping the Zoning Board. Mr. Sanderson agreed.

ADJOURNMENT

Meeting was adjourned on motion at 8:07 pm.

Roseanne Turner-Adams, Minutes Clerk