

A regular meeting of the Town of Victor Zoning Board of Appeals was held on April 16, 2018 at 7:00 P.M. at the Victor Town Hall, 85 East Main Street, Victor, New York, with the following members present:

PRESENT: Michael Reinhardt, Chairman; Matthew Nearpass, Vice-Chairman; Donna Morley; Scott Harter

OTHERS: Ed Kahovec, Town Board Liaison; Martin Avila, Code Enforcement Officer; Richard Soper; Kevin Saunders; 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 Michael Reinhardt, seconded by Mathew Nearpass,

RESOLVED that the minutes of February 5, 2018 be approved as submitted:

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

Approved: 4 Ayes, 0 Nays

Chairman Reinhardt – On the agenda today is an area variance. The Board has had an opportunity to review your application. There are five criteria for an area variance. The first is whether or not there is an undesirable change in the neighborhood. The second is if the benefit can be achieved by some other method. The third is whether or not the request is substantial and the fourth is whether or not the variance will trigger an adverse physical or environmental condition. The fifth is whether the variance is self-created. It's a balanced evaluation. Just because an applicant may fail one or two of the criteria, doesn't necessarily mean they won't get the variance. You will be getting quite a few questions from the Board trying to figure out exactly why you want the variance. By all means if you have any questions, ask. It's your application.

You'll have an opportunity to make your application. All that I ask is wait for our questions to be finished and we'll wait for your answers to be finished. We are creating a record, the minutes of the meeting. It will help us in the long run to create an efficient record. If you have exhibits, they're great, present as many as you want.

Mr. Soper – You should have a copy of everything that is important.

Chairman Reinhardt – I'd just like to give an overview so that we are on the same page. If you do use any exhibits, what I ask you to do is to use compass directions or the road, anything to identify what you are pointing to because the recorder can't tell where you are pointing. That will help us and create a good record.

### PUBLIC HEARING

1488 BRACE ROAD

Area Variance

3-Z-2018

Applicant is requesting an area variance to construct an addition to his home with a rear setback that is less than the required 40 feet per Schedule II, Area & Height requirements. The property is zoned Residential-2 and is owned by the applicant.

The secretary read the legal notice as it was published in The Daily Messenger on April 5, 2018.

Chairman Reinhardt – What I'd like to do before you get started, those criteria I was talking about, I like to plug in the facts that you've given us and where they fit in the criteria. It's just so that we are not repeating ourselves and focus in on potentially where we need some more information for the criteria.

The first one is if there is an undesirable change in the neighborhood. Your application points out that your neighbor is not opposed to the addition, is that right?

Mr. Soper – That's correct.

Chairman Reinhardt – You have a wooded lot behind you that buffers your neighbor behind you. We have a pre-existing nonconforming structure with respect to the setback minimum. You also had a prior variance back in 1986 but that was for the front yard addition. We are talking about the backyard today.

Mr. Soper – According to Debby that has changed since that time.

Chairman Reinhardt – This is for a laundry room that is currently in your basement and you want it on the first floor. I think potentially that could improve the value of your house.

Mr. Soper – Oh, absolutely.

Chairman Reinhardt – Our historian has sent us an email and she finds that there is no historic significance. I think all those factors fit into whether or not it's an undesirable change in the neighborhood. You are asking for an 11 or 12 foot variance. Do you know which one it is?

Mr. Soper – The problem begins with the fact that I have not had it surveyed. Any of those measurements are due to me, so they may be in error. If they are not in error it puts me, already the back of my house, on the west side of the house, within five feet of that setback. I'm at 35 feet instead of 40 feet. If I put the addition on, which is six feet in depth, then that is another six feet.

Chairman Reinhardt – We have to work on that a little bit, as far as how much of a variance you need. It looks like it is 11 or 12 feet.

Given that, is there anything else you would like to add or tell us about what the variance is and why you think this Board should grant it?

Mr. Soper – One of the issues here is the last one. It's not just a whim on my part to improve the house somehow. I feel it is beginning to be a necessity. A little over a year ago, my wife fell down the cellar stairs. That put me on this mission to figure out what is the best way to do this. The only thing that I could come up with, that seems reasonable to me, is to build this addition that will include the laundry. The laundry will virtually be part of the existing bathroom.

Chairman Reinhardt – Your age, you are both in your 70's?

Mr. Soper – We are both 75. That's why I want to do it.

Environmentally speaking, the only thing this is going to do, is I have to pull out an old Wisteria bush and take down a compost pile. All of which I feel are not important.

We just talked about the encroachment. I don't feel like it will be significant particularly because of the background. You have the pictures in front of you, you can see the pictures of my backyard, the west side of the house. The issue is that that is wooded. You can see through it now but in the summer when the foliage appears we can't see each other. We are friendly neighbors but I think we'd like to keep it so that we don't have to be looking at each other. That fits with the whole idea of the Residential 2 description. The purpose of the Act was to keep people from building too close together out in the countryside, I think, and I agree with that. This accomplishes that. I think I covered it all. I won't go on and on.

Ms. Morley did not have any questions.

Mr. Nearpass – Are there other areas of the house that you looked at expanding?

Mr. Soper – No, you should have a picture in front of you, the house plan. Brace Road is in the front of the house, the east side of the house. The addition is on the west side of the house, attached to the back. In my point of view it is ideally located because it is next to the bedrooms. You can see the stairs are there in the picture as well. Right now my wife has to gather up laundry baskets and walk through the kitchen and down those stairs. It's not good for her. It's not good for me probably either.

Mr. Nearpass – Have you considered other alternatives other than building out in this particular location. Have you looked at expanding south, off of the bedroom?

Mr. Soper – I considered that but I would have to completely reconstruct the bedrooms, plus the fact that the two bedrooms are an addition put on the house by the person I purchased the house from. There is only a crawl space underneath there so there is a problem of getting drainage. A sewer drain would have to be added.

Mr. Nearpass – OK, so this is the probably the optimum place to put the laundry room.

Mr. Harter – The addition is just six feet by nine feet, is that correct?

Mr. Soper – That's right.

Mr. Harter – Will it have a foundation? Will you connect to the basement?

Mr. Soper – This is going to be on piers. It's been approved by the building inspector. There will be two piers. The reason for it having piers instead of a crawl space is to make sure that I avoid utilities in the backyard. Very close to the south side of the addition is the access to the piping that goes to my geothermal heating system. I know exactly where they are. I know how to avoid them, but having to get in there and dig a foundation of any sort would be a problem.

Mr. Harter – I saw the geotherm that you had sketched on here but I was most concerned about the septic.

Mr. Soper – There is a sketch in one of the pictures that shows where it is. I know where it is. I know where everything is.

Mr. Harter – The way the current Health Department regulations are written the interpretation is that if you have a foundation or basement you have to be especially concerned with those separation distances. If you just put it on a pier foundation, you don't have any living space below the finished floor, then you don't have the same risk for seepage with a basement.

I don't have any more questions. I would just comment that this is a very minor structure. It seems fairly innocuous.

Chairman Reinhardt – Matt touched on looking at other alternatives. What I'd like to gain an understanding on is your laundry room runs off the bathroom, so effectively you are walking through the bathroom to get to the laundry room?

Mr. Soper – That's right.

Chairman Reinhardt – So if somebody is in the bathroom, no one is doing laundry? (Right). What about the patios on either side of the breezeway? Have you explored putting the laundry where those patio spaces are?

Mr. Soper – I did consider that. It would take quite a bit, there is no foundation under the patios. The breezeway would essentially have to be deconstructed in order to put a foundation in.

Chairman Reinhardt – Well you are not going to build a foundation with the laundry now, why do you need a foundation where the patio is?

Mr. Soper – One side is concrete and the other side is stone pavers. I would have to dig that up.

Chairman Reinhardt – Have you consulted with your architect? Is it something that you don't want to do or is it that it can't be done?

Mr. Soper – It just seems totally inconvenient to have it located there as opposed to near the bedrooms. It's already inconvenient to have to go through the kitchen and down the stairs to do it. Also there are windows there. The whole end of the house would have to be reconstructed in order to do it.

Chairman Reinhardt – Do you have any idea what the cost would be?

Mr. Soper – I don't know that.

Chairman Reinhardt – You have an office there. What about putting the laundry in the office, did you explore that?

Mr. Soper – My wife has. (Laughing)

Chairman Reinhardt – These are just the questions. What we are trying to do is pin down facts because we need to explore whether or not there is a feasible alternative here. If I don't ask that question then I'm not doing my job. So I'm sure there is an answer for it.

Mr. Soper – That would mean eliminating what I consider my office. Yes, it would be possible but it wouldn't be nearly as convenient. Then the path is even longer to go from where the dirty clothes are created, all the way through the house, the other side, and back again.

Chairman Reinhardt – So you use that office and it would be an inconvenience to take your office away and make it into a laundry room?

Mr. Soper – Right.

Chairman Reinhardt- To figure out how much of a variance you are going to need, how did you measure it? Was it from the corner of your house?

Mr. Soper – It's measured from the centerline of Brace Road. I take it that the striped line down the middle of the road is the center of the road. It's all I had to go on. I used a wheel and a tape.

Chairman Reinhardt – To figure out how much of a variance you need, you need to measure from the back of your house to the lot line.

Mr. Soper – That is what I have done. There is no way for me to identify exactly where that line is. I established the position of the line back here and the distance I am away from it by making all the measurements from the centerline of Brace Road.

Chairman Reinhardt – OK, you found your rear lot line by using the center of Brace Road. From your rear lot line, you took a measurement to the back of your house, right?

Mr. Soper – That's right and I would point out that that is probably an error because of the slope of the land and I measured over the ground.

Chairman Reinhardt – That’s what I’m getting at. The appropriate measurement is from the overhang of your house, horizontally going out to where your lot line is. That’s the measurement we need to know. That’s how we figure out how much of a variance you are going to get if this Board decides you will get a variance. You have to be careful because we just can’t say about 12 feet. This Board likes to be exact. If you need 12 feet, we need to know that. If you need 10 feet, we need to know 10 feet, because the law requires that we grant the minimum variance that you need. With that in mind, do you have any idea how much of a variance that you are asking for?

Mr. Soper – Let me ask you a question. When you measure your encroachment on that setback, you include the eaves of the house or just the walls?

Chairman Reinhardt – That’s what I was getting at earlier, it’s where the overhang is. The farthest point of your house; your roofline, whether it’s the gutter, the overhang and a line from that horizontally going out to your lot line. That’s how much distance it is from your house to the end of the lot line.

Mr. Soper – I would say I need to revise my figures of 12 feet to 13 feet.

Chairman Reinhardt – Scott, you being our resident engineer, from what you see there does 13 feet give him enough room for that six by nine addition to run to the end of the lot line?

Mr. Harter – Yes, well the addition is six foot out, right?

Mr. Soper – Make it seven feet because of the overhang that will be on it.

Mr. Harter – If it’s seven feet and you’re estimating your house is at 35 feet, that leaves 28 feet. Maybe if your measurement is off we should give you a couple of feet for that.

Mr. Soper – You should.

Chairman Reinhardt – It will be a problem if you ask, for example, 11 feet and then one of our Code Enforcement Officer’s go out there and take an accurate measurement and then have to say it’s not correct, you have a problem. It’s better to sort this out now before any digging starts.

Mr. Soper – The only way to sort it out more accurately than we are doing now would be to have a survey. I never felt the need to have it surveyed.

Mr. Harter – Have you owned the property since the beginning of the parcel?

Mr. Soper – I’ve owned the property since 1969.

Mr. Harter – And you’ve never had it surveyed?

Mr. Soper – No. One of the pictures is a survey made by my neighbor at the time and it was what they called then a tape survey, so there are no markers or monuments or anything like that. My neighbor, Skip and I, look and say well, it's about here.

Chairman Reinhardt – Marty, can you help us out here? Does 13 feet sound like enough?

Mr. Soper – Would it be a problem if you said 14 feet?

Chairman Reinhardt – We started off at 11 feet, now we're at 14. It's very important that this Board when granting a variance only give the minimum amount necessary. A variance runs with the land, whether you stay there a month or 20 years, whoever owns it next. That variance stays there whether you live there or not so we are very careful on how we grant the variance and how much.

Mr. Soper – Is the downside for making an error on my shoulders?

Chairman Reinhardt – If we grant a variance, hypothetically, 10 feet and you needed 14 feet, the error is on your shoulders. The evaluation may be different, partly because the one criteria talks about is the request substantial. The difference between 10 feet and 15 feet, may be somewhere between 22 and 29 percent of how much you are asking for. It's a bit of a jump, do you follow me? That's why we have to be careful with our analysis so we know what numbers we are looking at when we plug "is this request substantial"? The Board may feel that 10 feet is not substantial but that 15 feet is substantial. I can't speak for the Board, we are still working on that.

Mr. Soper – In light of everything that you've said, I'd like to ask for 15 feet.

Mr. Nearpass – Since there are no markings behind the home, when you show up to measure, where are you going to measure it to?

Mr. Avila – Typically on a house we would require a new site plan with swing ties, but for something like this we are accepting that it has been planned and what is on the plan is what is being built. In this particular case we took aerial measurements from OnCor and GIS and it appeared with that, that he is 35 feet from overhang to rear property line. I would say that 12-13 feet is probably safe.

Chairman Reinhardt – I would recommend that this Board consider 13 feet for you. If it turns out that it is 13 feet 1 inch and our Code Enforcement Officer says no, you are too far, then you will have to come back in and we will have to revisit the substantial issue. Probably, it sounds like you are in good shape.

Mr. Soper – In that case I would build an overhang of two inches.

Chairman Reinhardt – You can do that. As long as we are looking at complying with the variance.

Mr. Soper – And I appreciate the difficulty that you would have going out and making the measurement.

Mr. Avila – And that is not something that any of the Code Enforcement Officers or Building Inspectors would do. That would be something that we would call in a surveyor or landscape architect to do because they are the only ones that can legally tell you this is how far your house is from your property line.

Mr. Nearpass – So you do that at whose expense?

Mr. Avila – It's the applicant's expense.

Mr. Nearpass – Every time?

Mr. Avila – Only if it comes in to substantial question.

Chairman Reinhardt – So the last question I have for you, hopefully, is regarding the physical and environmental conditions. I think that is really referring to, the addition, if that is going to cause different drainage issues. The gutters, are they going to be tied into the existing gutters, the drainage system, how is that going to look?

Mr. Soper – The gutters right now drain from the corners. It's one continuous gutter that drains at the corners. By making an L here and a stalk and an L and a stalk, it's not going to change.

Mr. Reinhardt – That's what we need to know. As far as I'm concerned, but the Board will consider it, it won't change any physical or environmental conditions. Anything else you want to add?

Mr. Harter – The question I have is on the 13 feet, which seems like an OK number but I'm just wondering, you are proposing that this goes out six feet towards your rear property line. Is the 13 feet related to that six foot dimension? It would seem fairly large.

Mr. Nearpass – I was going to ask the same. In your diagram it shows two side by side laundry appliances. Those are about 3 feet. (30 inches) So this is looking to us like it's about six feet.

Mr. Harter – So I don't think you need 13 feet, do you? Wouldn't a more reasonable number be 10 feet?

Mr. Avila – He's already at five feet pre-existing nonconforming, so he is already five feet into his setback, plus the six feet.

Mr. Harter – OK, that was what was confusing me. So that means you already have 11 showing and we are going to 13, OK.

Chairman Reinhardt – Is there anyone from the public who would like to speak for or against this project? (There was no one). Our County Planning Board chimed in and indicated that they make

no recommendations for or against the project. Looking at all that is there anything else you want to add?

Mr. Soper – I don't think there is anything else. So you are going to decide, not tonight, but...?

Chairman Reinhardt – No, we are going to decide tonight. I'm glad you are happy! I'm going to run through the criteria and make sure the Board is all on the same page with the findings. They may add or take away and we can certainly talk about that as we are going along.

The Chairman of the Board went through the criteria as they appear in the resolution and the Board members were in agreement.

RESOLUTION – Area Variance:

WHEREAS, an area variance application was received by the Secretary of the Zoning Board of Appeals on March 9, 2018 from Richard Soper, 1488 Brace Road, Victor, NY 14564 to construct an addition to the house with a rear setback of 27 feet whereas Schedule II Area and Height Requirements require a 40 foot rear setback for a district zoned Residential 2 and,

WHEREAS, said application was referred by Alan Benedict, Code Enforcement Officer to 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 April 5, 2018 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 Section 617.5(c)(12) and therefore does not require further action; and,

WHEREAS, the Ontario County Planning Board assigned the referral as an Administrative Review Class 1, referral no. 48-2018, and returned it to the local board on April 11, 2018 stating they would make no formal recommendation; and,

WHEREAS, the house at 1488 Brace Road is on the Town of Victor Historical Inventory with a low historical value and on April 6, 2018, Babette Huber, Town Historian, wrote in an email stating that she had no objection regarding the addition proposed at the rear of the house; and,

WHEREAS, a Public Hearing was held on April 16, 2018 at which time no resident spoke for or against the application and one email was received from a neighbor with no objection; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for the construction of an addition to 1488 Brace Road, Victor, NY 14564 with a 27 foot rear setback, whereas Schedule II, Area and Height Requirements for Residential 2 Districts requires a 40 foot rear setback making the request for a 13 foot variance:

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 addition will increase the owner's property value. The neighbor is not opposed and there is a wooded buffer between the proposed addition and the neighbor's lot. It is a matter of convenient access to put the laundry room addition on the first floor as opposed to in the basement. The Victor Town Historian found no historical significance and the existing house is already pre-existing, nonconforming with the rear 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 other areas that were suggested for the location of the laundry, the current office or patio, are not convenient as they are farther away from where the laundry needs to go and the plumbing is closest at the proposed location and therefore the placement proposed for the laundry room addition makes sense.

3. The requested area variance is not substantial.

Justification: 13 feet is probably close to a 29% variance and is not substantial.

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 way the gutters will be tied in to the current system will not affect drainage and create runoff to the surrounding area.

5. The alleged difficulty is self-created. This consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

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

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application of Richard Soper, to construct an addition with a 27 foot rear property line setback at 1488 Brace Road, Victor, NY 14564, whereas Schedule II, Area and Height Requirements for Residential 2 Districts requires a 40 foot rear setback BE APPROVED:

FURTHER RESOLVED that the following conditions are imposed:

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:

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

Adopted: 4 Ayes, 0 Nays

Chairman Reinhardt – Congratulations.

Mr. Soper – Thank you for your time.

On a motion by Mathew Nearpass, seconded by Donna Morley, it was unanimously agreed and RESOLVED, that the meeting was adjourned at 7:40 PM.

Debby Trillaud, Secretary