

A regular meeting of the Town of Victor Zoning Board of Appeals was held on May 7, 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; Al Benedict, Code Enforcement Officer; Wendy and Joseph May; 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 Mathew Nearpass, seconded by Donna Morley,

RESOLVED that the minutes of April 16, 2018 be approved as submitted:

Michael Reinhardt	Aye
Mathew Nearpass	Aye
Scott Harter	(Arrived after vote)
Donna Morley	Aye

Approved: 3 Ayes, 0 Nays

PUBLIC HEARING

1. MAY'S (Area Variance)
7238 State Route 96 5-Z-2018

Applicant is requesting zero foot front and side setback area variances to install a seasonal tent to sell plants and garden related items. Schedule II, Area & Height requirements for Commercial Districts requires an 80 foot front setback and a 5 foot side setback. Also requested is a variance to Section 165-4B(6) which states that no sign shall be closer than 35 feet to the right-of-way.

2. MAY'S (Area Variance)
7224 State Route 96 6-Z-2018

Applicant is requesting zero foot front and side setback area variances to install a seasonal tent to sell plants and garden related items. A large part of the tent will be on the property next door to May's at 7224 State Route 96. Schedule II, Area & Height requirements for Commercial Districts requires an 80 foot front setback and a 5 foot side setback. The owner of 7224 State Route 96 has given permission to request this variance and has signed an agreement for May's to use the property.

Chairman Reinhardt – We've looked at the application and there are five criteria that are applied to area variances. You should have looked at the five criteria and they are: Whether or not there will be an undesirable change in the character of the neighborhood; whether or not there is an alternative method that is feasible; whether or not the request is substantial and fourth is whether or not it will have an adverse impact on the physical or environmental conditions of the area. Fifth is whether or not it is self-created.

The Chairman of the Board explained to the applicant how the meeting would proceed and the secretary read the legal notice as it was published in The Daily Messenger on April 29, 2018.

Chairman Reinhardt – I think you've already been informed that we can't make a decision tonight because you are on State Route 96 and the County requires to put their two cents in. We don't have their two cents yet. Once we have their comments we can figure out what, if anything, we need to do. We need to wait for their advice/opinion.

What you have here is three requests for variances. The summary of what you are looking for on your property is a zero foot setback. The second is that you want a sign in the front of your home and the third regards a leased piece of property, it's all related, but you want to sell product on the leased property as well. So you are going to need three variances. We are going to do one variance at a time. The first being a zero foot setback for installing a seasonal tent. You want to sell plants, holiday seasonal materials, decorations, gifts, garden care products, and other related products. Is that right so far?

Mrs. May – Yes.

Chairman Reinhardt – You are in a commercial district. You did have a prior variance back in 2001, but it expired because you did not come in for another request. If I have it right, it expired March 2002.

Mrs. May – That would be Mayflowers, my husband's and his brother's business. This is a separate entity, this is May's; this business is only mine.

Chairman Reinhardt – We are on the same page, that variance expired and you need another one?

Mrs. May – Yes.

Chairman Reinhardt – With that if there are other details you want to plug in with the criteria that we are looking for and how it is that you think your variance should be granted.

Mrs. May – First I can begin with the hill. The hill just goes up behind us. The 80 foot setback would put you into the hill, so that piece is really not useable. The only flat portion is not 80 feet back.

Chairman Reinhardt – If I understand you, 80 feet takes you well beyond where the garage is. Is that right?

Mr. May – Right about even with the front of it.

Mr. May – When we applied a long time ago it was just for a couple of events here and there. She wants to be there more consistently. It's still seasonal, but a longer season.

Mrs. May – Like through the summer. It's weather permitting when it comes to Easter for sure, because if it's too cold the plants will die. You can't have them outside when it's snowing and cold. So that would be up in the air, weather permitting. Mother's Day, the same thing. More than likely the weather is good but sometimes you have those late bouts of winter. Then through the summer, closing in July after the fourth of July. It would stay closed in August and open in September for Mums and fall items. Then it would close again and perhaps be open for Christmas trees and wreaths. Through winter we would not be open except for Valentine's Day.

Chairman Reinhardt – Let us ask you some questions and then you'll have an opportunity to fine tune your responses.

Ms. Morley – On the map, can you show the available spaces for parking?

Mrs. May went up to the dais and showed Ms. Morley the parking spaces on the diagram.

Ms. Morley – And do you want to put up a tent or what are you going to use to show your wares? Are they going to be in the garage/barn?

Mrs. May – Valentine's Day is done in the building, the garage. The rest of it is done on the outside in-between our property and Pace. I usually have a tent up for the cashiering end of it or check out center. Also a tent for delicate plants, plants that need shade.

Ms. Morley – So that would go up and down?

Mrs. May – That wouldn't be up the whole time, no.

Mr. May – Not even the whole time she is open. The tent wouldn't be up all the time. About half the time it would be.

Chairman Reinhardt – Just for clarification, we are only talking about the selling of the seasonal product. We are going to hold off on the sign and hold off on the leased property. Let's focus in on just their property.

Mrs. May – I think you have a photo of the yellow and white tent for the placement of where the tent would be. Ideally that's what the setup would be.

Mr. Nearpass – So there is the sign, the zero and side setback for the seasonal tent and there is the third that....

Chairman Reinhardt – The leased property. Pace's property, they are entering into a year to year lease agreement and they want to sell product on the leased property.

Mr. Nearpass – And that requires a variance. (Yes)

So you want to put the tent at a zero foot front and side setback.

Mrs. May – If you just would like to talk about our property I think you are referring to maybe the part next to the garage where it would be like a delivery drop off, the parking area. It's more so the leased agreement piece with Pace that would actually have the tent and the product on it. If we want to just talk about our property that would be more the parking area, the garage unit and right next to the garage.

Mr. Nearpass – I was specifically focusing on the need for the side setback, the side and the front setback, is because of the seasonal tent. "The applicant is requesting zero foot frontage and side setback variance to install a seasonal tent to sell plants and related garden products.

Chairman Reinhardt – If the tent wasn't there, they would still need a variance because they are selling product.

Mr. Benedict – They are selling product which is basically called an open display. An open display requires the same setbacks as if it were a structure.

Mr. Nearpass – It's not because of the tent, it's because of the open display, OK.

Chairman Reinhardt – If you look at that picture on the bottom where they have the Mums, they need a variance for that even though there is no tent over it.

Mr. Nearpass – Now I understand because I was trying to figure out why we thought a tent was a structure.

Mr. May – In that photo where the scarecrow is standing, that's right about where the property line is. We are sharing from one property right to the other.

Chairman Reinhardt – I think eventually, when we get the big picture, the criteria that we are looking at for your property, the zero setback, is going to be very similar to the leased property, but because they are separate variances we have to go through the criteria and get everything to match up, if you will.

Mr. Nearpass – The flowers and what you sell, do you grow them yourselves, are you reselling them? Is it considered an extension of a farming activity or anything like that?

Mr. May – We have a nursery in Seneca Castle where we do grow things.

Mr. Nearpass – But not on this site?

Mr. May – Not on this site.

Mr. Nearpass – Other than this are there any examples near you where you can cite that there is a similar situation? It may be in the Village, but when the Boy Scouts set their things up, is that the Village or the Town AI?

Mr. Benedict – It's the Town.

Mr. Nearpass – Do they have a variance for that, a permit?

Mr. Benedict – I believe they had approvals years ago to bring product in there and sell it there.

Mr. Nearpass – Do you have examples of how it's in the character of the neighborhood to have a similar set up?

Mrs. May – It's a commercial district for one.

Mr. May – I think quite of few of the properties through there have a zero setback for one reason or another whether it's parking or a sign. Not everyone is staying back 80 feet with their parking areas. It's not like we are going to be way out farther than everyone else.

Mr. Nearpass – So you feel it would be in line with where everyone else is?

Mr. May – We are pretty much even with Pace's parking lot.

Mr. Nearpass – Even with the zero setback, how far is that back from the edge of the pavement? How far is that away from Route 96?

Mr. May – It's about 20 feet.

Mr. Benedict – On your map it ranges from the minimum point of 11 to 16 feet from the right-of-way to the property line. The property line varies. I used the ARC GIS.

Mr. Nearpass – I was wondering what the standard is. Normally, I think we've seen 30 feet from pavement edge. I think from a safety perspective instead of zero if it were two or five would it be in line with what we would expect to see from a distance of a.....

Mr. Benedict – I think for example Victor Chevrolet is like 30, 35 feet. I think you get into the lawn mower place that is 20 feet or below.

Mr. Nearpass – From the right of way? (Yes) But not from pavement edge.

Mr. Benedict – That's well below. Six 50 is like 19 feet or something.

Mr. Nearpass – What I'm trying to get at is zero what you absolutely need?

Mr. May – Where the tent is, from the back side of the tent, there is only about four or five feet that are tolerable to walk on and then from that point on it gets a lot steeper. It's not safe for a customer. Not that it's unsafe, but it's not safe to be walking around with plants in their hands.

Mr. Nearpass – I just want to make sure, as people are walking in and out and obviously in the picture the flowers are in between the tent and the road, are they five feet away from the edge of the road?

Mrs. May – It slopes near the road, so I don't feel comfortable having customers walk there anyway, so we would keep it set back enough so that it's not going to be a danger. So customers aren't walking on any uneven ground.

Mr. Harter – Just to make a comment to Matt; looking at one of the maps that was submitted, this one right here, shows the whole parcel, and looking at the location of the edge of pavement and the proposed location right on the highway boundary, it looks to me to be 20 plus feet from the edge of pavement to right-of-way. I would also say that I am a neighbor across the street from you and I have observed this site quite often and I see when you are doing various things there. You don't seem to be in my face when I drive by and I don't think this would be in my face either. I guess the questions I have is this a temporary situation, just for the season, and then you take it down come winter and it's no longer there and goes away?

Mrs. May – It would be open Valentine's Day and then Easter if the weather permits and that is done outside. Valentine's Day is done in the garage. It would be Mother's Day, weather permitting, sometimes we've had bad weather for Mother's Day. It may be open for the summer.

Mr. Harter – OK, so it comes and goes.

Mrs. May – Yes. Then I would close in July, and then be closed end of July, August and open in September for fall Mums; close again and open for Christmas time for wreathes and trees.

Mr. Harter – So, Al, the reason we are doing this even though their use is temporary or sporadic in nature, they still require an area variance? Is that correct?

Mr. Benedict – Yes. It's an open display. It will require a special use permit through the Planning Board and it is my opinion that it also requires a setback variance. This is following required variances before for the same item, the open display.

Mr. Harter – OK, thank you.

Chairman Reinhardt – I'm going to ask you some pointed questions, we need to get some detail on this. We need to get specific on when it is that you are open and when it is that you are not.

You know, but we don't quite know it yet. So starting with January and moving down through the end of the year:

January – Closed February – Open February 8th through the 14th.

Chairman Reinhardt – And hours of operation would be what?

Mrs. May – 9 a.m. to 7 p.m.

Chairman Reinhart – And in February, your product is in the garage?

Mrs. May – Yes sir.

March – If Easter falls in March it would be open in March.

Mrs. May – But, then again, weather permitting.

Chairman Reinhardt – We can't do that with a variance. It's either got to be in or out. If you're going to say Easter what is the window of time going to look like?

Mr. May – It'll be a ten day period.

Chairman Reinhardt – So ten days prior to Easter and then Easter Sunday you are done? (Yes) And your hours of operation are what?

Mrs. May – 9 a.m. to 7 p.m.

Chairman Reinhardt – And April would be the same thing for Easter. Anything else going on? (No). May?

Mr. May – May should be open around the first of May.

Chairman Reinhardt – So May first until when?

Mr. May – Until July. July 10th.

Mrs. May – Hours of operation would be 8 p.m. in the summer nights. 9 a.m. to 8 p.m.

Chairman Reinhardt – You are closed August, September?

Mrs. May – Open for Mums the September 10th until October 31st, 9 a.m. to 8 p.m.

Chairman Reinhardt – November?

Mr. May – She would be open right at Thanksgiving time, depending on when Thanksgiving falls it would be somewhere around the 20th.

Mrs. May – We have to give a date so we'll say November 20th through December 25th. 9:00 a.m. to 8:00 p.m.

Chairman Reinhardt – OK, that takes care of that. You were saying in your application that most properties have zero setbacks. I think the quote was “most properties in the immediate area, displays or parking areas are out to the zero setback line”. Which ones? I've looked at the map and I'm not seeing it, help me out here.

Mr. May – When you drive by they are about out to where we are so I assumed that they had a zero setback.

Chairman Reinhardt – I'm looking at one of the exhibits that you gave me and it's an aerial view and there is a blank line that runs pretty much in front of your house and it runs over by Pace. Pace isn't selling plants or windows in front like you are. So there are differences there.

Mr. May – The trailer center down the street from us....

Mr. Harter – The trailer center would be probably the most direct comparison.

Chairman Reinhardt – I understand, and I think we talked about it quickly, is if you were to comply with the Code, 80 feet is about where the front of the garage is, so it would have to be behind that. What you are telling us is that it really doesn't make any sense. Looking at some alternatives, you do sell product and plants and things in the garage on Valentine's Day, why can't you sell there on other days, like Easter, as well?

Mrs. May – The space for one. It's not big enough to be able to handle the product line that I would like to be able to sell. Two, customers don't want to go into a garage to buy garden supplies and plants and things. They like the tent from the feedback that I've gotten. The ease of it, to be able to pull up and not have to go through green houses in hot weather or huge areas to get to what they would like.

Chairman Reinhardt – You can do it, you just don't want to do it for the summer season.

Mrs. May – It's not big enough to handle our product line.

Chairman Reinhardt – What about the parking lot area?

Mr. May – The plants can only be in the dark a couple of days, that's why it works for a short period of time so it's OK for an overnight storage but they can't be in the dark for a very long period of time.

Mrs. May – They do need sunlight.

Chairman Reinhardt – OK, what about the parking lot? Why can't you use the space... instead of having it in the front of the house why can't you use the parking area for your product?

Mrs. May – Customers need to park there.

Chairman Reinhardt – I'm not saying use all the parking spaces, but you can use some of them.

Mr. May – On busy days she has up to eight cars.

Chairman Reinhardt – Can you use the northwest corner of the property? Looking at your house, your parking lot is to the right, why can't you use the space to the left?

Mr. May – There is not really an optional way to get from one side to the other.

Mrs. May – Yes, and then the customers are walking in front of the house and in front of where I want to have my goods to sell. It's slanted and the customers would be forced to walk in a not so safe way to get over to...do you know what I'm saying?

Chairman Reinhardt – I do, but it sounds like you are almost contradicting yourself. You want to put product out there for people to go on...

Mrs. May – No, no, they are not going to be stepping on the slanted part. I'm not putting product on the slanted part. It's going to be on the flat area. Then the customers can have access to my products in the flat area. They are not going to be walking the slant. Whereas if we did it on the other side of our house, they would have to walk that slant area to get to the area that you are suggesting we use. We've exhausted our options and this is why we would like to use the area in agreement with Pace. It's best for the safety of our customers and to place our product line.

Chairman Reinhardt – You mention the added income element, that's really not relevant to an area variance, it may be to a use variance, but I'll give you the benefit of the doubt. What is the added income have to do with an area variance?

Are you related to Mayflowers out in Canandaigua? How so?

Mr. May – Yes, I'm one of the owners.

Chairman Reinhardt – What I'm curious about is the necessity of how much product you really need to put in this area? Yes, this is a commercial area, you have some space to use, you are somewhat limited because of where the setback is, but the Board isn't just going to say you want to do this so just let it happen.

Mrs. May – Mayflowers is my husband who is partners with his brother. Whatever profits they do receive is a shared profit. We have two children and it does require me to work and this is the most feasible way for me to do it. This way I can still be on the premises with my children but yet be able to work and provide an income for our household. The business has no affiliation with Mayflowers itself. I have my own DBA, my own TIN, it's Mays and this is solely mine.

Chairman Reinhardt – My global view on this, I'm not speaking for the Board, it's just my view, I'm not a big fan of having anything in front of that house. I think you have enough room if you

draw an imaginary line, whatever the distance from the right-of-way to where the front of the house actually is, behind it. You can figure it out.

Mrs. May – It's all hill. Then right next to the garage is a very small parking area, it's not even large enough to sell anything.

Chairman Reinhardt – I would defer to my engineer over to my right. The topo map, the elevation in the northwest corner is about 590' and the space that you want to use, and we'll get to Pace in a minute, is the same 590'. It looks about the same level from left to right.

Mr. Nearpass – He's not talking about putting it behind the house. He's talking about the five, it looks like five feet between the right-of-way and the front of the house. Is that what you are talking about?

Mr. May – There is only about five feet from the front porch to the right-of-way.

Chairman Reinhart – I'm not a fan of putting anything in front of that house.

Mrs. May – We are not using our house. You have our house, then you have the driveway parking area, and then over here is the small portion we own and then Pace Windows. That is the area we are looking to use to sell flowers.

Chairman Reinhardt – The tent, the product, on your property is behind the front of the house.

Mr. Nearpass – If I draw an imaginary line across the front of your house and parallel with the right-of-way; that's the line he is talking about.

Chairman Reinhardt asked the Mays to come up and he could explain what he was saying on the map.

Chairman Reinhardt – What I'm trying to understand is, if you draw a line where the front of your house is, all your product is going to be, I don't care if it's right or left of the house, but all your products and the tent are going to be behind the front of the house.

Mr. Nearpass - So what you asked for was the red line, which is zero setback, but Mike is asking, can you live with it, push that five feet closer so it's five feet away.....

Mrs. May – That's like the slanted area I'm talking about, would be that measurement that we wouldn't want anyone on it anyway?

Mr. May – We could definitely work with that, if we had a five foot setback.

Chairman Reinhardt – What I want to know yet, is just what Matt said, can you live with that? If the variance is granted and we drew that imaginary line that everything, anything you want to do with the tent and product is behind the front of the house.

I don't even know, where is the entryway?

Mr. May – There is an entryway on both sides of the house.

Chairman Reinhardt – For our discussion, we are going to call the front of the house the side that is closest to Route 96. Everything is behind the house. Nothing is going to be sold on your property in front of the house. Then it comes all the way over through the parking lot to where Pace is and then going northwest to whoever owns the property over there.

Mr. Nearpass – So that would be like a five foot setback or whatever that distance is, instead of zero.

Mrs. May – I was not looking to have product right at the edge of the road.

Mr. Nearpass – The red line is not the road, the red line is the right-of way. So you have the road and then about 16 to 20 feet, the red line, and then five feet which would basically be that line parallel to your home.

Mrs. May – Is the right-of-way considered the grassy area?

Mr. May – Yes.

Mr. Harter – So the proposal is to go to a zero setback which would put you right on the highway boundary but Mike I think I'm hearing you talk about five foot back from that?

Chairman Reinhardt – We're going to use this, it's a little better map. If we draw a line where the front of their house is, where the porch is. The porch is attached so it would be considered the front of the house. The front of the porch drawing a line that is parallel to Route 96. I don't know what the distance is but ...

Mr. Harter – It looks to me to be, based on the scale, to be about five feet parallel to the highway boundary. So is that what we are looking at?

Chairman Reinhardt – The question I have for you is if the Board grants the variance and if the Board is charged with granting the minimum variance, could you live with five feet from where the right-of way is?

Mr. May – What about the sign?

Chairman Reinhardt – We're going to get to the sign in a minute. Let's just talk about the tents and the products and everything else for the time being.

Mr. May – In reality we are probably right about like that. I think the right-of-way in front of the house would be just a hair in front of the gardens that are there. That slope stays continuous from one side of the driveway to the other side.

Chairman Reinhardt – My concern is anything that is in the front of that house potentially could cause obstruction for drivers going up and down Route 96 or people, your customers leaving. The more stuff you put in front of the house, the harder it is to see. Route 96 is tough enough to navigate as it is.

Mrs. May – It wouldn't block their view of exiting or entering.

Chairman Reinhardt – If we grant a variance what I don't want to get into is to say, OK you can have product out there. The next thing you know you may say I can start stacking it. Remember the old car commercial, you can stack cars. I understand, nursery people do that, they put stacks of plants and things. I'd rather not put anything in front of the house as far as products and tents go, keep it behind the front line of the house. At least that is my thought. I believe that for the time being that's all I have for this variance. Anyone else have anything they want to add or comment on?

Mr. Nearpass – I think what Mike proposed makes perfect sense. I was trying to get at it earlier but he did it much better than me. Is there a reasonable buffer that is not right on the line? Also it's easy to see, explain, and identify. Is it behind the porch or not? It looks like it's only about five feet so hopefully it's not too substantial from your side. From our side from zero to five is kind of a big deal in our world. The only question I have for Mike is that we talked a lot about the operating hours. Are those in any way part of the variance or were you just data collecting? There is no contingency on these hours being that, that would be more on the special permit they have to get.

Chairman Reinhardt – I think potentially it could, because now once you start adding different elements to it, certainly it's 7:45 p.m. and the sun is up, but in December it's dark at 4:00 p.m. and you're going to need lighting. I imagine you want to sell Christmas trees and things. That's going to put a different wrinkle, a different element on it. When businesses are looking for variances we have put restrictions or conditions on what the hours are. What I'm trying to do is first get the facts and figure out if those need to have conditions on them.

Mr. Nearpass – So if I understand what Al said the variance that we would grant or not isn't for the operation of the business, it's to put the temporary placement of their product.

Mr. Benedict – Correct.

Mr. Nearpass – So it's not for business operation hours, that would be covered by the special permit from the Planning Board which gives the hours of the day, the times of the year and such. So we're looking at this as kind of a structure. It's regulated no differently than if it were a structure. What would the variance talk about?

Mr. Benedict – It would talk about the open display which I think would include the tent.

Chairman Reinhardt – I think we could, if we wanted to, say this variance is only good for these hours of operation. Potentially it would change it if it were January, open until 9:00 p.m.

Mr. Nearpass – I totally understand. My opinion on it is I'm OK with what you had suggested from the distance perspective, but in my opinion I would leave it unconditional and leave that to the Planning Board and the Special Use Permit to dictate the hours of operation. I'm looking at this almost purely as if a structure were going there, although it's not. It would go with the land 24/7 365 days, you are allowed to place something there and the next level of regulation on top of that is the Special Use Permit. I think that would be more specific in the operating hours.

Chairman Reinhardt – I'm not opposed to that. When you say seasonal, I want to be able to get my arms around that. What does seasonal mean? For some people seasonal might just be spring. Forgive me for criticizing the past variance you received, but when I look at the justifications, there was not a lot of meat in there that gave guidance as to why that variance was granted. I think we do a pretty good job of really getting into the details of what does this fact mean? Where does it go, where does it fit in the criteria? So whoever looks at this variance in the future know why the granted or denied the variance.

Mr. Nearpass – I was just looking at it in terms of if they came here saying it was a year round business it wouldn't have impacted my decision any differently, if it were seasonal or not. If they came here and said, I want a shed with a zero setback, it would be a completely different discussion, a permanent structure was going to be there, but, I'm speaking for myself, it doesn't matter if it's all year around, seasonal, it didn't have an impact on how I looked at this in terms of does it meet the five criteria.

Chairman Reinhardt – The hours of operation, being seasonal, doesn't necessarily mean that it's changing the character of the neighborhood, OK.

Mr. Nearpass – Also, I think they pretty much have it on every season anyway, with a couple of holes here and there.

Mrs. May – I wanted to add that the reason Valentine's Day is done in the garage is because they are roses and roses cannot be outside in the cold. We need a way to keep them warm. Even that bottom left picture shows the area you are referring to next to the garage, that that could possibly be used, but it's not large enough.

Chairman Reinhardt – You could put some product there though, sure you could.

Mrs. May – I could put a pallet of potting soil there. I don't because that is actually, well we'll get into the other things you don't want to talk about, but that space is for the delivery of my products. If a truck needs to back in, that's the best area to back it up into so that it's out of the way of cars and people. You don't get it delivered and immediately put it out. It's a process.

Chairman Reinhardt – Being to all the nurseries that I've been to, they get very creative on how it is that they want to display their product. Sometimes, like out in Canandaigua, it's one row, nice and flat, but as you go farther to the back it's stacked up and there are all kinds of products in the back. Kudos to you guys, you know how to market it. I'm not trying to outsmart you guys. Whatever space that you have, I think you're going to figure it out. Scott do have anything you want to add?

Mr. Harter – I would just say that I look at the application a little differently than Matt. I think the fact that it is a temporary use and they've identified the times during the season that they propose to use it, that affects my feeling on granting the variance and I feel positive about granting the variance for what they need. If that were to be a variance that was to be granted year round, I think I would feel differently about it.

Ms. Morley had no more comments.

Chairman Reinhardt asked if there was anyone from the audience who wished to speak and there was no one.

Mr. Benedict – If you were to grant the variance, specify the distance from the pavement edge or from the right-of-way because it's different as the right-of-way line is different from the pavement edge on the map.

Mr. Harter –Based on the sketch that you drew there Mike, I think it's about five feet according to the bar scale. The graphic scale that I am looking at.

Chairman Reinhardt – We are going to hold on to this exhibit that we've marked "B". The idea that we are having....

Mr. Nearpass – We can't approve a sign anyway. We can keep it for next time, I'm saying.

Chairman Reinhardt – To determine the distance it's from the corners of the porch to, will if we use the southern corner and mark five feet it's going to be different than if we use the northern corner.

Mr. Nearpass – It would also be angled, so if we just kept it five feet parallel so it's a five foot setback.

Mr. Benedict – If you put the porch as the front line of the house and you draw that parallel to the road you are going to find that the display is right on the right-of-way.

Chairman Reinhardt – So whatever that distance is the line we are going with is the front of the house being parallel to the sides of the property. If it's 5'1" on the southern corner and 4'8" on the other corner than that is what it is. We're going to use the front of the house. We are going to keep our fingers crossed that that house doesn't move anymore. We're going to run a line parallel.

Mr. Harter – So we are not going to use the highway boundary then, we're not going to use the five feet from the highway boundary, we are simply going to project the line from the porch across? Is that what we are going to do?

Chairman Reinhardt – Is that going to further complicate matters?

Mr. Benedict – I think they can deal with that.

Mr. Nearpass – Al, what do you consider the front of the house? It might make it easier for us to just to say not forward of the front of the house.

Mr. Benedict – The front of the house would be the porch.

Mr. Nearpass – We can just say not forward of the front of the house.

Chairman Reinhardt – Right. We're making it clear in our facts here that we are considering and determining that the porch is the front of the house and that line, whatever that parallel line is, no product can be in front of the porch.

Mr. Nearpass – Is it conditioned on the times of the year or not?

Mr. Reinhardt – We have to wait for the County. We can kick the tires again the next time around and make a determination. That's our goal, is hopefully the County comments will come back and we can make a decision on this.

Do you want to talk about the sign or the lease? I think the lease has more similarities than the sign does. What do you want to do?

Mrs. May – The lease.

Chairman Reinhardt – So I think it is the same analysis that we are looking at and the same criteria that we were looking at. I still think that globally if you still use that line from the front of your house, where the porch is, and continued it on over to the leased property, that's the line. It can't be any farther forward. Could you live with that piece of it?

Mr. May – Yes, but I think I'd rather see it off the right-of-way, just because it would be easier for me to keep track of where it is and measure it off the road. Besides having a survey, I don't know how I would get that straight line off of the porch.

Chairman Reinhardt – Well we don't want to give Al any headaches.

Mr. May – As far as measuring it off the road compared to him standing on the site and looking across from the house.

Mr. Nearpass – Is the right-of-way easily found?

Mr. May – It's pretty parallel to the road and easier.

Chairman Reinhardt – How problematic is it for you Al to figure that out if our benchmark or our starting point is the front of the house, being the porch, and a line running parallel going over to Pace?

Mr. Benedict – It would be easier to go with the line parallel to the front porch otherwise trying to measure the pavement, if you recall there is an incline there which is near impossible for me to get an accurate measurement. Unless you know where the right-of-way line is I'd be guessing where it is. If you want I can always come out at some point and say this is where I think it is and we can talk about it again. We can measure from some object.

Mr. May – How technical are going to get when you come down and look? If we are over a foot over?

Mr. Benedict – Call me and have me come out at some point before you set it up, maybe before the next meeting.

Chairman Reinhardt – Now the wrinkle we have here is the lease. The headscratcher for me is what are you going to do if you don't get the lease next year? If there is no longer a meeting of the minds and you don't get the lease?

Mrs. May – I will close then.

Chairman Reinhardt – I think what happens is what they call a sunset, is that the variance goes away. So no lease, no variance. Does the Board agree with that?

Mr. Harter – Yes.

Chairman Reinhardt – In this instance the variance is going to be contingent upon you getting that lease every year.

Mrs. May – So I can just get a copy of the new lease for the following year and submit to you guys?

Chairman Reinhardt – Well, now we're going to defer to Al again. Is that the best way?

Mr. Benedict – Yes. I will probably put some kind of reminder in the file so that every year I can send you a letter that says, by the way you owe me a lease agreement on this date.

Chairman Reinhardt – What will happen is if he doesn't see that you will get a letter from the Town saying that your variance has expired.

Mr. Nearpass – Whose variance is it? Is it their variance or the land next to them?

Chairman Reinhardt – It's going to be the land owner's variance. The variance is going to run with the land.

Mr. Nearpass – So Al is going to ask the land owner for the lease?

Mrs. May – I get the lease. It just shows that I still have permission to use that piece of land. I think you have a copy of the lease agreement that I currently have. Next year I would revisit that again and get another copy of the lease for a year and send it to Al.

Chairman Reinhardt – What can potentially happen, what we don't want is Pace holding onto that variance, not that you are going to go out of business, but if you do go out of business, and they keep it, that's a potentially different reason for a variance.

That will be the condition, the only way you can have that variance is if you have the lease agreement between Mays and Pace, everything else the variance goes away.

Now for the sign, what do you want to tell us about the sign?

Mrs. May – Obviously I've never made a sign myself before, so I am open to color suggestions, any input that obviously matters.

Chairman Reinhardt – Color is going to be Planning Board. We're more of the size and where it goes.

Mrs. May – So it's four by five by six.

Mr. May – It's six foot off the ground from top to bottom.

Mr. Nearpass – So it's more than just a variance for the sign being a zero setback, it's a variance for the sign as well?

Chairman Reinhardt – It's where it is. The size of it isn't the problem.

Mr. Nearpass – It's not the size, so you can have that?

Mr. Benedict – It's a Planning Board decision.

Mr. Nearpass – I thought we had to have monuments signs, and only if there is one business there or something? I thought a monument sign had to indicate just the name of the business. I thought there were specific criteria.

Mr. Benedict – I don't think so. It can't have additional businesses on them. While you are discussing, I can check into it.

Chairman Reinhardt – So what we are looking at is a sign that is within 35 feet from the public right-of-way.

Mr. Benedict – Pavement edge.

Chairman Reinhardt – So that's why you need a variance, because the sign is proposed to be placed with 35 feet of the pavement edge. You are in a commercial district. Again, you had a prior variance and it expired.

There are four by four posts, permanently in the ground. In the past you had temporary signage. It's about six feet high, about, and five feet wide. Is that right? (Yes, sir) The proposed area is about one foot from the pavement edge or the right-of-way?

Mr. May – One foot from the right-of-way.

Mr. Benedict – Is what was proposed. The Code refers to pavement edge.

Mr. Harter – The pavement edge, according to this map, is about 20 feet away from the right-of-way.

Chairman Reinhardt – So what are you telling us? From the pavement edge, where is the proposed sign.

Mr. Harter – If we assume that the distance from the edge of pavement to the right-of-way is 20 feet and if the sign is one foot of the right-of-way, then that's 21 feet from the edge of pavement.

Mr. Benedict – I measured using the ARC GIS. There are a couple of places depending on where you measure to that it ranges from 11 to 16 feet. The accuracy of that is debatable.

Mr. Harter – I'm taking it off this drawing that was provided, using the bar scale that was provided. Let me double check it.

The May's gave Mr. Harter a larger survey map that was to scale and not reduced to look at.

Mr. Benedict – Has the survey been changed since the 2001 map?

Mr. May – No, it has not.

Mr. Harter – According to this map that was drawn at 20 scale, the sign is to be placed somewhere near the porch, a little closer to the parking area, is that right?

Mr. May – About half way between the parking area and the porch.

Mr. Harter – I'm wondering if the pavement has been widened. I come up with roughly 27 feet. 27 feet according to this drawing if the edge of pavement has not changed since that was done in 2001.

Ms. Morley – You said 27?

Mr. Harter – Yes, per this map.

Mr. Nearpass – Why not an A-frame sign? A temporary sign.

Mr. May – This way we don't have to worry about taking it down all the time. I thought something like this would be nicer to see out there than an A-frame sign.

Mrs. May – It's more professional looking.

Mr. Nearpass – No, I'm not commenting on the esthetics. I think it looks great. I wasn't sure with signs, I didn't think you were allowed to have text that changed on it seasonally and things like that. I thought the sign had to designate your business or the location you were at. I believe we've had other applications that unless it was an exit or a sign that was directing you somewhere it had to be the name of the business.

Mrs. May – The bottom portion that is changeable is what you are referring to? (Correct) It would always be the same font, it just advertises a special. It wouldn't be in there when we were closed for the season.

Mr. Nearpass – I just wanted to make sure that the only variance we needed was for the placement of the sign. I would not want to see it between the house and the road. It seems like again, it would be one other thing that would obstruct your view, coming in and out.

Mrs. May – You are thinking it's closer to the road. It's actually, Al you have been there, it's back far enough, if you are there waiting to pull out it's not affecting your view at all.

Mr. Nearpass – It's about five feet wide?

Mr. May – Four feet.

Mr. Nearpass – Four, but then you have the posts on the side. Al do you measure from the posts or do you measure the distance?

Mr. Benedict – Just the sign.

The plan was pulled out and Mr. Nearpass, the May's and Ms. Morley discussed the positioning of the sign.

Mr. Harter – I think that number I gave you is incorrect. The reason it is incorrect is because this 2001 drawing was only a two lane highway. We've gone to three lanes and that's what is shown in the photographs now. I think Al's GIS number is the better number to go with.

Chairman Reinhardt – So between 11 and 16 feet.

Are you going to start the sign at the edge of the porch?

Mr. May – It would be right at the edge of the porch so that would be going against what you were saying before it would be out in front of that porch line.

Mr. Nearpass – Where you drew it looked about half way.

Mr. May – It would be right about even.

Mr. Nearpass – So it will start where the porch ends and go five feet from.

Mr. May – The setbacks of the posts would be behind that.

Mr. Nearpass – OK, so it would go out four feet.

Mr. Nearpass – How tall is it?

Mr. May – It's about six feet tall.

Mr. Nearpass – Is there any place else you can put the sign or anyplace else you considered?

Mr. May – Anyplace on one side or the other of the house....

Mr. Nearpass – You are going to have all those flowers out front. Right, the flowers are the best advertising you have.

Mrs. May – The sign advertising the specials and things would need to be visible because that's what people like. They like specials and promotions and deals. If they see that, that would encourage them to stop.

Mr. Nearpass – You couldn't do that with an A-frame or something that was temporary and less permanent or smaller? Again, I'm only one person on the Board.

Mr. May – We had temporary signs out there but we're trying to upscale. A-frames are good and bad, you know they blow over. I'd have to figure out how to put longer legs on them for the slope, it's more difficult.

Chairman Reinhardt – As far as the signage goes and being permanent, how close to the side lot line can it get?

Mr. Benedict – You can go right up to it.

Chairman Reinhardt – So if you were to go towards Pace, so that the house isn't blocking it, and still use the same line from the front porch, and the edge of the sign is no farther than that line, you should have good sight line for both traffic both north and south on Route 96. That's an idea, what do you think about that?

Mr. May – That would be right where we set the tent up.

Mrs. May – And then I feel like people will think they can use Pace's parking area.

Chairman Reinhardt – So it could happen, but your thought is that it may not attract the customers that you want.

Mr. May – If we would use that line and a five foot setback that is even with the porch then the sign would be inside the tent.

Chairman Reinhardt – I’m curious. I understand the Valentine’s piece. I’ve driven up Route 96, I know when you’re open there are flowers everywhere, I don’t need a sign. To some degree, I don’t care if it’s Mays, Mayflowers, Bristols, you are selling flowers. I get it. If you look at some businesses you don’t know what they are doing until you look at the sign or go into the store and figure it out. It’s obvious, it should be obvious what you are doing. The signage issue, I’m still concerned about putting things that close to the road and causing obstruction especially when this is potentially going to be six feet high and five feet wide. Can they have a sign on the house Al, being commercial?

Mr. Benedict – I hesitate because the house is residential.

Chairman Reinhardt – They can’t have a sign on the house but it’s zoned commercial?

Mr. Benedict – Correct.

Chairman Reinhardt – I’ve never heard of such a thing.

Mr. Benedict – It’s a residential house in a commercial district. I’m thinking about this one.

Mrs. May – I don’t want to confuse people thinking that our house is the actual store. I don’t want them coming in my house.

Ms. Morley – You could put a sign on the garage/barn.

Mr. Benedict – I could go with that.

Mrs. May – The problem is that I believe sign placement is important because it directs the customer as well. By putting a sign on the garage they are going to think there is stuff in there for sale when actually in the summertime everything is in the outdoor display.

Chairman Reinhardt – I’m forecasting, oftentimes the County is very sensitive to signage up and down Route 96. I’m guessing what they are going to do is say sorry, you can’t have that in front of the house. That forces our hand that we need a supermajority to grant that variance to where you want to put it. What the Board is trying to do is explore ideas like can that sign be any other place, specifically, behind where the front of the house is.

Mrs. May – Putting it on our house, no. Putting it on the garage, no, it’s redirecting customers in the wrong direction. Too close to Pace gets in the way of our outdoor display. I don’t want them going into Pace’s parking lot either; utilizing their parking lot and thinking that’s where we are. Again, the proposed placement of it doesn’t obstruct your vision as far as pulling in and pulling out. The businesses around us, like Six50 and the placement of their sign.

Chairman Reinhardt – They had a variance and they were here many times.

Let me ask you, if the Board doesn't grant you a variance for the sign are you going to close up shop and not sell flowers. Probably not. I know it's important. I'm guessing that if you don't get a variance for your sign, you're going to find a way to advertise and sell your product. I think you're still going to be open.

Mrs. May – It's a small business so to do advertising in papers

Chairman Reinhardt – Sometimes we ask that question and then the applicant will say well then we're not going to do it.

Mr. May – The other option is temporary signs but is that better? An A-frame sign can be blown out into the road.

Mr. Benedict – It would still have to be on your property and couldn't be closer to the road than the right-of-way. It has to be near the entrance, near the driveway. It has to be brought in every night.

Mr. May – I was wondering what the difference would be if we are carrying the sign out there every day, right on the right-of-way.

Mrs. May – That kind of sign could fly right into the road.

Chairman Reinhardt – I'm going to suggest to be prepared for the County saying you can't have the sign in front of the house. So think of some alternatives. You may want to live with it or you may draw a line in the sand and say it's either this or nothing. Give it some thought.

Mr. May – If it comes back from the County and to you, will it go back to the County again?

Chairman Reinhardt – No, the County is an advisory Board. They are just giving us advice on what they think, from the County standpoint, what they think should happen. Depending on the level of concern that they have, that will dictate, by law, what we do. Normally, if you are not near a State or County Road we don't need the County's recommendations. In this instance since it borders State Route 96, you are within 500 feet of the State Road, they get to give us advice. If the County says you can't have a sign and our Board says we think you could have a sign. In order to go against what their advice is we need a supermajority. That would be four people.
I'm giving you a heads up.

Ms. Trillaud stated that the County information that Mrs. May had was just a summary of what the projects on the County agenda were.

Mr. Harter – The typical reaction of the Ontario County Planning Board, they are a referring Board, so what they will do is give us a recommendation for denial. That is what triggers the supermajority. They don't issue an approval or denial they make a recommendation to us for denial. It's important to know the distinction between the two.

Chairman Reinhardt – If they “don’t care” they basically tell us they don’t have any comments and tell us we can do whatever we want to do. Scott is right, if they recommend denial they give reasons why they feel it should be denied and we as a Board have to consider their comments.

Mr. Harter – Are we taking any action tonight?

Chairman Reinhardt – All three variances require County input.
You did a great job!

Mrs. May – Thank you.

Mr. Harter – That was a lot of discussion for no vote.

It was unanimously agreed and RESOLVED, that the meeting was adjourned at 8:33 PM.

Debby Trillaud, Secretary