

A regular meeting of the Town of Victor Zoning Board of Appeals was held on May 21, 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; Donna Morley; Scott Harter; Fred Salsburg

ABSENT: Matthew Nearpass, Vice-Chairman

OTHERS: Ed Kahovec, Town Board Liaison; Al Benedict, Code Enforcement Officer; Robert Klein; Conor Gallagher; Rocco Sacco; Gretchen Perrone; John Sheehan; Dan and Kim Green; David Campnell; Wendy 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 Donna Morley, seconded by Scott Harter,

RESOLVED that the minutes of May 7, 2018 be approved as submitted:

Michael Reinhardt	Aye
Mathew Nearpass	Absent
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Abstain

Approved: 3 Ayes, 0 Nays

Chairman Reinhardt welcomed Fred Salsburg, the new Board member, and went over the general procedures of the Zoning Board meeting including the five criteria that the Board uses to determine if an area variance should be granted.

PUBLIC HEARINGS

6803 VALENTOWN RD - Fencing Project (Area Variance) 7-Z-2018
Applicant is requesting to install a fence forward of the front line of the home, whereas Section 211-41H states that fences over two feet high shall not be erected nearer to a road than the front line of the principal building.

Ms. Gretchen Perrone addressed the Board.

Ms. Perrone – I am requesting an area variance to put a five foot fence at 6803 Valentown Road to safely secure my dogs on the property. The present Code creates a difficulty for me to use my property for its intended purpose. My lot is unique. It's uniquely shaped and I have a shared driveway with my neighbors. The position of my house is unique with its position to Valentown Road. My house faces the shared driveway which is almost like an access road as opposed to Valentown Road. The fence that I wish to have installed would be put on the 40 foot setback line parallel to Valentown Road. It will go through a wooded area, I do have a picture here showing the north end of my property, on Valentown Road. There is a wooded area here so the fence would be almost camouflaged from the road. The fence would go through the trees and come back to the back end of my property and attach to the house on the other side. It won't create an eyesore for anyone on Valentown Road. Even though I need a variance, I feel it's still in keeping with the intent of the Code because of the shared driveway and the location of my home, the fence will still be on the side and in the backyard of my house, not a large obstructive fence in the front of the house.

Do you want me to go through those five criteria?

Chairman Reinhardt – Either you can or we will. Whatever you feel more comfortable with. If you'd rather have us ask questions regarding the five criteria, but you'd like to talk about the five criteria, then please do.

Ms. Perrone – I'll go through the five criteria and if you need more information then just ask me.

I do not believe there will be an undesirable change in the neighborhood or nearby properties by granting this variance. The fence will enhance my property and the surrounding properties. It's a very attractive steel ornamental fence. Again, it won't be seen from Valentown Road, it won't be obstructive, it'll be a sleek line in the landscape.

I did look at other methods and other ways to get around this variance, but unfortunately I could not come up with adequate alternatives. There are two things that I looked at. I looked at the possibility of putting in an invisible fence for my dogs. I have two Dobermans and invisible fence and Dobermans don't work well together because they'll go through it. Just as importantly, invisible fence doesn't keep out animals and dogs off of my property. Dobermans are naturally territorial and protective and however nice they are it's better that they are safely behind a secure fence.

I am also just relocating the actual fence on my property because my house is positioned at the south end of the lot. The lot itself is an acre lot. The vast majority of the property is north of my house which is in between my home and Valentown Road. That is the only place I can get enough area to give my dogs enough area to run to have a healthy amount of exercise.

I don't feel that this variance I'm asking for is substantial as the fence is still going to be behind my house. It's a matter of technicality that it will be in between my house and Valentown Road. For that reason I don't feel it's substantial because it's still keeping with the general intention of not putting a large five foot fence obtrusively up in front of my house.

The fence will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood. Environmentally the fence won't have any impact and physically, it's not changing any of the land or even the view on Valentown as you drive down because, again, it will be obscured by these trees. What isn't obscured, I'm going to put landscaping in.

Lastly, the difficulty was not self-created. I purchased this home, it was already built, and there wasn't a fence there. It's a gorgeous lot. It's a great lot to have two dogs. It's private and secluded. There are trees all around it and behind it. There is Conservation land next to it. I didn't even think I would need a variance if I kept it behind my house like that. I didn't realize that because the address was Valentown Road, that even if it was the side of the house, not the front, it would qualify for a variance.

That's pretty much everything that I have other than I have these pictures to show you.

Ms. Perrone showed the pictures of where the fence would be installed all the way around her house.

Chairman Reinhardt – Can you tell me what is the significance of the lease agreement to the residence that you submitted with the application?

Ms. Perrone – I'm doing this on behalf of the owner Jacalyn Falter.

Chairman Reinhardt – You had terms, you interchanged them. You said you are the owner, but you signed a lease agreement.

Ms. Perrone – I am not the owner. I just interchanged myself for her because I'm representing her. Should I start over?

Chairman Reinhardt – No, no, we're just trying to clarify here. So you are the tenant of the property, not the owner and you have her permission to be here. (Yes) How long do you plan on staying at this property?

Ms. Perrone – It's my Mom who owns the property and although she is a Florida resident who lives in Florida six to eight months a year, she comes up and stays with us there a significant amount of time.

Chairman Reinhardt – How long do you plan on staying at this residence?

Ms. Perrone – Ten to twenty years. Eventually I'll purchase it.

Ms. Morley – This picture you're showing us of the fence, is this the fence you're going to put in and this is how you are going to landscape it?

Ms. Perrone – That is not exactly how I'm going to landscape it, no, that's just a picture of a landscaping.

Ms. Morley – But that is what the fence is going to look like?

Ms. Perrone – That's is what the fence itself is going to look like, not the landscaping.

Ms. Morley – On this picture that you show with the fence?

Ms. Perrone – That's just my temporary fence right now.

Ms. Morley – So that's not where you are going to place the fence?

Ms. Perrone – No, that's just a picture of the property. It's a temporary fence until I can get a permanent one.

Mr. Salsburg – Will the fence be black? (Yes). Will it be located where that temporary fence is now?

Ms. Perrone – No, the temporary fence is just a small area. It's secured to my garage and goes down to my patio. The permanent fence is going to be larger and encompass more of the lot.

Mr. Salsburg – Closer to Valentown Road?

Ms. Perrone – Yes, closer to Valentown Road.

Mr. Salsburg – How much closer do you think?

Ms. Perrone – It's going to be on that 40 foot setback line.

Mr. Salsburg – Coming from County Road 9 all I see is woods. It's only coming from the mall that you would see it.

Ms. Perrone – You would see a little bit of it on the corner. There is a gas line, so it's not going to be all the way over to the driveway.

Mr. Salsburg – The house seems to be about 150 feet off of Valentown Road.

Ms. Perrone – Yes, and this fence would be 40 feet off of Valentown.

Mr. Salsburg – So it's coming out 100 feet?

Ms. Perrone – Yes.

Mr. Harter – The map that we are looking at on the screen, the dimensions, the numbers, represent the length of the fence line as you traverse around? (Yes) So you are adhering to the 40 foot setback for structures but the purpose of the variance is because the fence is ahead of the primary structure; is that correct? (Yes) On the easterly side are you right up to the property line with the 152 dimension? Does that hug the property line? (Yes) I think I understand the project and that you are representing the owner. (Yes) I understand what you are trying to do and why you are trying to do it. You indicated that an invisible fence is not an option because of the type of animal and its ability to be contained within an invisible fence, is that right? (Yes) I don't have any more questions.

Chairman Reinhardt – Variances run with the land is a way of saying that the granting of a variance, whether you are there or whoever is there, owners ten, twenty years out, it's going to stay like that. It's important that the Board explore, take very seriously, granting a variance. Just because you have dogs, the next owner may or may not have dogs, but having a fence out in front still has to meet the criteria. One of the concerns I have is looking at the total amount of footage that you are asking for and if my math is right, everything behind the front point of the house is about 260 feet of fence. I don't know what the square footage is there, but it seems to be an amount. I don't want to say significant, but a lot, it's something. It's an amount that for some dogs is plenty. Looking at the front, that's about 220 feet. So total, that is a lot of fence that you are asking for. I know they are dogs, I have dogs, dogs are great, but are you telling us you really need that much fence, that much space, for the dogs to run on the side and the front of the house?

Ms. Perrone – The answer is yes and there are a couple of reasons for it. The first reason is in the back section of the lot we are going to be doing some landscaping and putting a pool in and a deck. So when you look at the sections of the fence that are 32 feet and 77 feet, that really gets taken up with living space so to speak, not really accessible for the dogs to use. Behind the screened in porch right there, there is only a little over 20 feet, almost 24 feet of distance between that and the fence. That's very tight. It may not seem tight but when you are looking at it, it's a small section. Really the whole section for them to access to run and be in the yard is this open area. When we purchased this, my Mom purchased it, it was because we had an acre of land and again, looking at the house and the position of it, although it's going up to Valentown Road, it's not in the front of the house. Had this been a development instead of a shared private driveway, it wouldn't be a discussion, but because the address is Valentown, even though the house doesn't face it and I'm far off of Valentown, this variance comes into play.

Chairman Reinhardt – I understand your opinion, the Code says otherwise, that the front of the house is the northerly corner of the house to Valentown.

Ms. Perrone – You're right, I get that.

Chairman Reinhardt – We've had other applicants come in before saying they are going to do something, but that's ifs and buts and we don't have crystal balls. We are not going to force you to put a pool in because you said we are going to do it.

Ms. Perrone – We are already pulling the permits. Mauro Polidori already started and pulled the permit for the decking and the landscape architect is drawing it up as we speak so it's not hypothetical, it is happening. I do understand what you are saying and I don't have anything to show you but you can look, I just had a Victor Codes Inspector at the house today to give approval for the permit.

Chairman Reinhardt – What's working for your favor is that vegetation that is on Valentown Road. As I understand it, it's not a conservation easement. You can do whatever you want with that vegetation in the front. If you wanted to mow it down, trim it, you could. If it's a conservation easement, you can't, depending on what kind it is, but generally you can't touch it. Oftentimes what happens is, if someone is looking for a variance, we sometimes call it buffer, if you soften the variance, in this case the fence, so maybe people who are driving up and down

might not see that fence or it might not be so obvious because it's beyond the house and the vegetation is there. What are your thoughts about leaving that vegetation just as it is?

Ms. Perrone – Absolutely, I'm leaving it just as it is. Valentown Road although it's beautiful and at moments it is very quiet, there are high traffic moments. People love using that to get to the mall and Route 490. So, actually, I'm going to be planting a large line of pine trees there as well.

Chairman Reinhardt – So in that area that is currently vegetation, surely trimming trees, planting, that's fine, but you would be OK if the Board decides to make that a condition to granting this variance, leaving that vegetation as is or if you want to improve on it, that's fine too.

Ms. Perrone – Absolutely.

Ms. Morley – On your map, where you start with 32 feet, where the point of the garage is, could you not go straight out so that the person behind you wouldn't see all that fencing. The person whom you share the driveway with. They are going to look down on the view and see the fence.

Ms. Perrone – I spoke to them and they are fine with the fence. It's not even coming out as far as this tree because there are right-of-ways here for the gas and the utilities so we can't do anything there.

Ms. Perrone came up to the dais and indicated on a picture which showed the shared driveway and a tree that was outside of the utility easement.

Ms. Morley – It looks like it comes right out to the driveway.

Ms. Perrone – The first line is the utility line. The driveway itself is not fully on the property, the property is very unique, so part of the driveway is on the Polidori property.

Ms. Morley – So you can't cut it straight across from there and go out to Valentown?

Ms. Perrone – It cuts off a significant amount of the yard, but I can obviously look at it again. When we planned this the contractor came out and did around the property lines but keeping in the restrictions of the right-of-ways.

Mr. Harter – Al, we've had conversations in the past on these projects with flag lots and the way houses are oriented. I see that the front of the house is not really oriented toward Valentown Road. Do we have two front setbacks on this property or the one as shown?

Mr. Benedict – Just the one.

Mr. Harter – Just the one, and the reason for that is?

Mr. Benedict – You don't get two front setbacks unless you are physically on a roadway.

Mr. Harter – So even though it is a common drive, we are not considering it that way?

Mr. Benedict – Correct.

Mr. Harter – The only other things I would say is that I think the desire to preserve the vegetation along Valentown Road is a good mitigation item. I also notice that the flag pole going back to the southerly lot is kind of narrow, 25.36 feet. So, if you take the fence all the way up there I can see that it would be noticeable. Any consideration of maybe adding some landscaping in that zone?

Ms. Perrone – Oh yes, we want to do landscaping all the way around the fence. I don't want it to be obtrusive to the Polidori's. They are very kind and accepting of the fence. I made sure they were good with it. I'm going to landscape it so that it's not obtrusive to me looking out at it or anyone looking in on it.

Mr. Harter – So your neighbor is Mauro?

Ms. Perrone – No, that's his son, it's Joseph.

Chairman Reinhardt – You don't have anything in writing though?

Ms. Perrone – That they are OK with it? (Right)

Originally they were going to let me put it on their property. I don't have anything in writing but they are not here and they did get notified of it. I might have an email from Mauro that his Dad is OK with it.

Chairman Reinhardt – Just by you saying they are OK with it, with all due respect, that's not good enough.

Ms. Perrone – Oh, I didn't know I needed to bring their approval with me or I would have. I thought just sending out the postcards and putting up the sign...

Mr. Harter – You don't have to, but it is something we consider.

Ms. Perrone – Again, I ran it by them and honestly everything you have in front of you I emailed to Mauro to make sure his parents were OK with it. We are living right next door to them and we are sharing a driveway; I want everything to be OK.

Mr. Harter – If you were to add landscaping along the segment of your fence line that is identified as 40 feet, would you back the fence off a little bit.

Ms. Perrone advanced to the dais again to show the image with the right-of-way and the shared driveway.

Ms. Perrone – There are no restrictions to planting shrubs in the right-of-way. Like I said, I'm going to make it look as nice as I can. I already met with AJ's Accent. They're going to work with me and it's going to look very nice.

Mr. Harter – So as part of granting the variance, you would be able to provide landscaping in those areas that we have concerns about because they are a concern of yours as well. If that's the case I would be curious to know how we would frame that in our resolution. How much landscaping, how it gets placed and how to deal with that.

Chairman Reinhardt – I think the thought on that is much of the conservation easements that we have currently, Al, correct me if I'm wrong, some are no touch and some you can plant in them.

Mr. Benedict – There are some that do not discourage planting.

Chairman Reinhardt – Certainly if a dead branch falls, I'm assuming you can clean that up, but to disturb the current vegetation, you can't do that, but if you wanted to put other plantings in there that are native to the area, then great. More is better, but what I think the Board is trying to drive at here is that if you start thinning that out too much and making it so that the fence can be seen from the road, that's not going to be good.

Ms. Perrone – I've got that intention so I'm fine with adding all that language into the variance.

Mr. Harter – I have this drawing here that says “shows where Conservation Easement is on neighbor property”. Is it the hatched or dotted area?

Ms. Perrone – Yes, right. All the land behind my property to the east is a conservation easement.

Mr. Harter – So you technically would not be planting in the conservation easement?

Ms. Perrone – No, I'm not touching the conservation easement. Actually, can I? Can I plant on the opposite side of the fence in the conservation land? I feel like it would be OK to plant.

Mr. Harter – According to the map I'm looking at, if this map is correct, there is a gap of land between you and the conservation easement that belongs to your southerly neighbor. So I think you could get his permission to plant there. I think the conservation easement is a little farther east.

Chairman Reinhardt – I would strongly recommend if you are thinking about doing anything in a conservation easement you either talk to our Code Enforcement Officer or the head of the conservation department. Al, would you recommend talking to you first or go to the Conservation Board?

Mr. Benedict – What is the question again?

Chairman Reinhardt – What can and can't I do in the conservation easement.

Mr. Benedict – Talk to me about it.

Chairman Reinhardt – We really can't tell you. 99% of the time we're going to tell you, you really shouldn't be touching that conservation easement until you talk to the Code Enforcement Officer.

Mr. Harter – If I understand the map correctly, I don't think you will be touching the conservation easement. You do have the vegetation on the north side of the property and you indicated that you would enhance that. I think that is a positive in addition to landscaping these other areas which I don't think will be in the conservation easement. So, I think that is very reasonable.

Mr. Benedict – Scott, I don't know how much faith I would put into this map. When I had gone through the file I found some discrepancies. I would go to the easement survey map as to what is actual.

Mr. Harter – OK, is that in here.

Mr. Benedict – It's the one that is up on the screen.

Mr. Harter – OK, maybe I'm looking at the wrong map.

Mr. Benedict – I would go with the easement survey because that is the most recent document.

Mr. Harter – So, it looks like we have a discrepancy. According to the correct map it looks like you would abut the hatched area, the conservation easement. Then you need to comply with what was said and be careful not to do what that agreement says not to do.

Mr. Salsburg – The aspect of this that makes it such an impact to me is how close to the driveway it comes. You are kind of making an assumption that if it were back farther from the driveway the dogs wouldn't be happy.

Ms. Perrone – On this diagram the first line is the utility right-of-way, not the driveway. The driveway itself is over one line.

Mr. Harter – So you are going to be an additional ten feet from the driveway, right?

Ms. Perrone – Yes, the fence will be behind the tree in the image, there is still substantial land there so that it is not impacting the driveway. You are not going to pull into the driveway and feel like you are butting into a fence.

Mr. Harter – So the fence segment that is 40 feet, that's going to be placed really on the...

Ms. Perrone – Same line as the driveway, yes.

Mr. Harter – As the driveway easement.

Mr. Salsburg – Do you think you could live with a line that goes off the back corner of the garage? It makes it seem a lot smaller in visual terms.

Ms. Perrone – We looked at it. It makes it seem smaller, so instead of coming out you want it to go straight out. I'm not sure that will have that much of an impact on the fence. I do see what you are saying.

Mr. Salsburg – There appears to be a dimension line off the back corner of the garage.
(*inaudible*)

Chairman Reinhardt asked if there was anyone from the public who would like to comment on the application and he also asked the Code Enforcement Officer, Al Benedict for comments

Mr. Benedict – If you were to approve it as is, I heard some discussion regarding landscaping. I wouldn't propose landscaping within the easement. You would be putting it into somebody else's utility easement. You would probably have to move the 40 foot section back away from the easement if that's where you are planning on putting the landscaping.

Mr. Harter – That kind of goes with Fred's comment.

Ms. Perrone – So we could pull that back a little bit.

Ms. Morley – That's why I was asking you if it could go off the front corner of the garage. You wanted the back corner, is that what you were saying?

Ms. Perrone – That is the front corner of the garage. It just goes off 32 feet on an angle and then straight down. Esthetically, it's coming straight down the driveway and then go into the tree area. If we push it back more ...(*inaudible*)

Ms. Morley – It goes straight across to the 88 foot portion.

Ms. Perrone – When you look at the house it looks like a nice neat turn, because we have the light poles so it all aligns nicely and we could landscape around it, but I could push it back. I'm pretty sure it's OK to plant bushes on the utility easement, you just can't put a structure on it.

Mr. Benedict – I wouldn't recommend it.

Mr. Harter – It kind of depends on what the easement says, what the language is. I think Fred's comment has merit. It is kind of close to the driveway. If you were to adhere to that line it would reduce some of the area that you would like to have, but I think it would be less impacting.

Chairman Reinhardt – I think the Board is on the same page. If we start with the westerly corner of the garage where the proposed fence connects with it, and go due north.

Ms. Perrone – Instead of doing that jog out?

Chairman Reinhardt – Right, go due north. This way it would stay away from the driveway. Before I go any farther, does the Board have any issue with how far it is from Valentown Road. I don't know what the distance is from that corner we are speaking of to Valentown Road. It's certainly not 72 feet.

Mr. Salsburg – It must be in the 50 foot range.

Chairman Reinhardt – So if you go 50 feet and then go due east to wherever that section is where the 64 feet is and then come back around.

Mr. Harter – So are you talking about pretty much following the tie dimension line that's shown on there until you intersect the 88 foot portion?

Chairman Reinhardt – No.

Ms. Perrone showed the plan of the proposed fence to the Chairman and they agreed where the fence would be. It would be from the front corner of the garage, nearest the driveway, and not the back corner of the garage where the dimension line is depicted. The Chairman then showed other members of the Board.

Ms. Perrone – I would be fine with that. Like you had said it takes some of the impact of the fence away when you are driving towards it.

Mr. Harter – I'm good with it.

Mr. Salsburg – I think it's a step in the right direction.

Chairman Reinhardt – So you keep it away from the driveway and we don't want to start getting into issues with, if you ever had a problem with your neighbor who says your fence is too close to the common driveway and you say you have a variance. The Board doesn't need to get into the middle of that.

Mr. Harter – I think that also ties in with my questions to Al regarding the front setback because we've gone around on interpretations of what the front setback is on a private road or a right-of-way, etc. That is a circle we've gone around many times. To that end, the compromise addresses the closeness issue from that perspective.

Mr. Salsburg – I think shortening up the fence along Valentown Road is also a plus.

Chairman Reinhardt – So I've marked "A" in the upper left hand corner. We are going to use that as an exhibit and as a guide to what this Board is heading towards for granting the variance. You are OK with that proposed line?

Ms. Perrone – Yes.

Chairman Reinhardt – Also our concern with where the 152 foot section is, as well as the 77 foot section that is abutting the conservation easement; that fence will not be in the conservation easement. Don't misunderstand the granting of a variance allowing you to put a fence into a conservation easement. This Town has been through that before and it's not going to happen again on our watch.

Ms. Perrone – OK, you made yourself clear.

Mr. Harter – Should we do any kind of detailing regarding the landscaping or do we accept the applicant's commitment to do the landscaping and leave it at that?

Chairman Reinhardt – I've driven by, Fred has driven by, I think that it's an accurate observation that when you are coming from County Road 9, looking through the current vegetation, I think the house is pretty well camouflaged. You can't quite see it. I don't think a fence is going to make any difference. Improving, or Scott as you say, enhancing, is only going to help that vegetation. I don't see why we need to over engineer or landscape it. Is the Board OK with that?

Mr. Salsburg – Landscaping can be kind of a temporary thing anyway. Ten years from now what are those woods going to look like? The fence has to stand on its own merit.

Chairman Reinhardt – Having the current vegetation that is there and also allowing the homeowner, the tenant, allowing to enhance it, that's fine too. It just can't go in the other direction.

The Board went through the criteria for the area variance.

RESOLUTION:

WHEREAS, an area variance application was received by the Secretary of the Zoning Board of Appeals on May 4, 2018 from Gretchen Perrone, 6803 Valentown Road, Victor, NY 14564 to install a fence forward of the front line of the house whereas Section 211-41H states that fences over two feet high shall not be erected nearer to a road than the front line of the principal building; and,

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on My 12, 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)(10) and therefore does not require further action; and,

WHEREAS, a Public Hearing was held on May 21, 2018 at which time no resident spoke for or against the application; and,

WHEREAS, at the Public Hearing on May 21, 2018 the Board discussed with the applicant their preference for moving the fence farther away from the driveway and the utility easement that is next to the driveway and the applicant agreed to change her plans. Instead of “jogging” out from the corner of the garage, the fence will now be installed from the corner of the garage parallel to the driveway out to the original plan where it intersects the portion of the fence that is parallel to Valentown Road. See Exhibit A attached.

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 installation of a fence forward of the front line of the house:

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 current owner of the property gave permission for the project and no resident spoke against the application. There is a vegetation buffer along Valentown Road between the road and the fence and no portion of the fence will be in the neighboring conservation easement.

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

Justification: Although an invisible fence can be installed which may work for smaller dogs in the future but it will not deter larger dogs which are in residence at the property now. The fence could be shortened or installed only behind the house although that may not support a lot of running room for the dogs.

3. The requested area variance is substantial.

Justification: Roughly 200 feet of fence is 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 fence does not negatively impact the physical or environmental conditions in the neighborhood. It doesn't affect drainage, tributaries.

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 Gretchen Perrone, 6803 Valentown Road, Victor, NY 14564 to install a fence forward of the front line of the house whereas Section 211-41H states that fences over two feet high shall not be erected nearer to a road than the front line of the principal building BE APPROVED with the following conditions:

1. That under no circumstances is the fence to be installed in the Conservation Easement that begins at the eastern property lot line;
2. That the current vegetation that exists to the north along Valentown Road be left as it is and not removed, however it can be enhanced with native plants;
3. That the fence be installed as indicated on Exhibit A, attached, from the corner of the garage parallel to the driveway out to the original plan where it intersects the portion of the fence that is parallel to Valentown Road, bringing the fence farther away from the utility easement and shorter than the 88 feet depicted along Valentown Road;
4. 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	Absent
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Adopted: 4 Ayes, 0 Nays

1. MAY'S (Area Variance) Carried over from the 5/7/2018 meeting
7238 State Route 96 5-Z-2018
Applicant is requesting zero foot front and side setback area variances for an open display, including 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) Carried over from the 5/7/2018 meeting
7224 State Route 96 6-Z-2018
Applicant is requesting zero foot front and side setback area variances for an open display, including 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 explained the Mays applications to the new Board member Fred Salsburg.

Chairman Reinhardt – What we have is three variances. The variance the applicant needs is to sell product, in this case it's going flowers, landscaping material, etc. to the front of her home. To comply with the Code, an 80 foot setback is going to put it behind the garage, so there is a need for a variance. We had a fair amount of discussion and I think the Board, as well as the applicant, was on the same page with whatever product that was to be sold was to be done from behind an imaginary line from a porch in front of the home, going in a southeasterly direction.

That ties into the next variance. They have a lease agreement with Pace, which is farther south. That same line would be used for that variance. The discussion we had as far as the conditions and criteria: It's a commercial area albeit that it's a residential home. There is a lot of business going on near the applicant on Route 96. The change in the neighborhood is not going to be affected much, we don't see there being a change in the neighborhood. As far as being significant, yes, it's significant, but if you comply with the Code, you're going to be at the front or the back of the garage? It's about at the garage, so if you comply with the Code it's going to have products behind the garage. On Valentine's Day you are selling products in the garage but you really can't do that for the other seasonal things that are occurring. It certainly is not going to change the environmental conditions of the neighborhood. It is self-created.

The other variance that has been requested is for the sign. The same kind of thought was could you keep the sign at or behind the imaginary line where the porch is.

We were waiting for the County to come back with their comments. Their comments were that all three variances are Class 1, which in a nutshell means they will not put their two cents in, that they're allowing this Board to evaluate the facts and make a determination on the criteria as we see it. So we don't need a super majority which is good news for the applicant.

Is there anything you want to add?

Mrs. May – When Al came out they were talking about a five foot setback for the tent?

Mr. Benedict explained how he went to the proposed site of the display and made measurements.

Mr. Benedict – The porch angles away from the road and right-of-way. I figured out where it needs to be and provided this Board with the measurements to the pavement edge. It's 25 feet.

Chairman Reinhardt – If the variance is 25 feet from the pavement edge that is going to run from their property on over to where the leased property is, the question then is, what do we do if that pavement edge changes?

Mr. Benedict – It's a good question. In this site I don't know exactly where the right-of-way is without surveying it. To me, at this point, the pavement edge was the only concrete object to take a measurement from.

Chairman Reinhardt – What are the Board's thoughts on granting a variance with a potential moving target? The moving target basically being that if DOT (Department of Transportation) decides to change our point of reference. It's never going to be narrower, they are going to keep trying to widen Route 96 to the max.

Mr. Harter – I think with respect to that issue we have the same sort of thing with Mauro's restaurant across the street and the sign he put up there. If the pavement grows then it brings into question all the variances we given. It forces a re-computation.

Chairman Reinhardt – If anything, what's going to happen if they do widen it, if we determine it's 25 feet from the pavement edge, if, for example, they change it and they make it six inches wider, the variance is still going to be 25 feet from the pavement edge. If need be, you would have to come in for another variance or something to modify the prior variance. I don't think the Board is inclined to create a sunset on that if that pavement edge ever changes the variance is gone. That doesn't seem very logical to me. Does that sound alright to everybody that we are going to use 25 feet from the pavement edge to make everybody's life much easier, including Al's? If he ever comes out and looks at it, it's a constant point of measurement. If DOT ever changes, you'll have to come back in and we'll figure it out at that point. Does that sound good to everybody?

The members were all in agreement.

Chairman Reinhardt – As far as the signage goes.... Al you have some thoughts on the signage, go ahead.

Mr. Benedict – The location of the sign was painted out. When I went to the site, I think it was one foot off the right-of-way. Once again, the measurement to the pavement edge, that's what the Code calls for. In the event that the pavement changes, the sign would still be allowed to continue, it just becomes pre-existing, nonconforming.

Chairman Reinhardt – Should I understand you right then, when you walked through and took a look at it, having the signage one foot off the paved edge...

Mr. Benedict – One foot off of what the owner believed was the right-of-way. Without having a surveyor, it's hard to determine exactly where that line is. The owner placed it according to where he thought the right-of-way was. I took a measurement to where the sign was proposed to be to the pavement edge.

Mr. Harter – And that's the 18 feet you came up with?

Mr. Benedict – That's 18 feet, yes.

Mr. Harter – I drove by today and I think that number is right. I think we should also just note for the record that the survey that was submitted, that was mentioned in the last meeting, was done prior to the expansion of Route 96. So those dimensions that I originally referred to are incorrect. I agree with Al's 18 feet.

Chairman Reinhardt – So the sign one foot off the right-of-way, and where it was demonstrated to you.

Mr. Benedict – Correct.

Chairman Reinhardt – Because if it's not, you're going to let us know. I presume once the sign goes up, they could make it 11 feet, they could make it six inches, one foot.

Mr. Benedict – You would have to get a surveyor out to determine exactly where the line is, if that is where you are going with it.

Chairman Reinhardt – I'm comfortable with having that be one foot off the right-of-way considering the amount of time we've discussed it and I'm not seeing anything from the County that they have any great concerns over this.

Mr. Harter – It kind of is what it is in terms of what they have to work with.

Chairman Reinhardt – Does anyone from the public have anything they want to add or comment on this?

No one from the public spoke.

Chairman Reinhardt – If memory serves, as far as for or against, did Pace actually comment on that? Are they for this or do we just have a lease?

Ms. Trillaud – We just have a lease.

Chairman Reinhardt – If you are ever unable to sign a lease with Pace, the variance then goes away. It's conditioned on the lease.

Mrs. May – Yes, we'll get a lease every year.

Chairman Reinhardt – The condition that we are looking at for the leased property – the resolution is only valid if the property owner at 7224 State Route 96, Victor Associates LLC, has given permission to the property owner at 7238 State Route 96 to use a portion of the land at 7224 State Route 96 and has signed an agreement to that effect. The lease agreement must be sent to the Town of Victor Planning & Building Department or this variance is null and void. You are OK with that?

Mrs. May – Yes.

Chairman Reinhardt – Any other questions or concerns?

Mr. Salsburg – Is the front edge of the porch still a guideline for the display material.

Chairman Reinhardt – What we are going to use as a marker is not the front edge of the porch anymore because of the angle the porch is in relation to Route 96. It's not perpendicular, that's the issue. So we can't really use the porch anymore. As a constant reference we are going to use 25 feet from the pavement edge. The sign is 18 feet from the pavement edge.

At that, do you want to go through the criteria again?

Ms. Trillaud – Go through the criteria please.

The Chairman went through the criteria for all three variances and votes were taken.

RESOLUTION – 7238 State Route 96 Front Setback Variance:

WHEREAS, an area variance application was received by the Secretary of the Zoning Board of Appeals on April 20, 2018 from Wendy May, 7238 State Route 96, Victor, NY 14564 requesting a zero foot front setback at 7238 State Route 96 for an open display, which includes a tent, to sell seasonal plants and garden items and a zero foot side setback with 7224 State Route 96, whereas Schedule II Area and Height Requirements for Commercial Districts requires an 80 feet front setback and a five foot side setback; and,

WHEREAS, said open display will cross over from 7238 State Route 96 to the property at 7224 State Route 96 for which a permission has been given and an annual renewable lease signed by the owner of 7224 State Route 96; and,

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on April 29, 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 a Class 1, referral no. 66-2018, and reviewed it on May 9, 2018 stating it was to be returned to the local board with comments; and,

WHEREAS, at the May 7, 2017 public hearing the Board discussed with the applicant the option of placing the open display no more closer to the road than a line from the front line of their house, which would be the porch, that extends across the property parallel to the road. On May 14, 2018, Al Benedict, Code Enforcement Officer, measured that distance to be 25 feet from the pavement edge.

WHEREAS, Public Hearings were held on May 7, 2018 and May 21, 2018 at which time no resident spoke for or against the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for a front setback at 7238 State Route 96 for an open display, which includes a tent, to sell seasonal plants and garden items and a zero foot side setback with 7224 State Route 96:

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: It's a commercial area, there is a lot of commercial activity and selling flowers and nursery products will not change the character of the neighborhood. A line 25 feet from the pavement edge gives enough space so that the product is not close to the road and there will be enough space for motorists driving by, entering or exiting the property to have proper line of sight. Flowers were sold at this property in the past helping to define the character of the neighborhood. It is a seasonal operation: Closed in January; 9am to 7pm; February 8 – February 14; March and April depending when Easter falls open for ten days 9am -7pm; May 1st through July 10, 9am to 9pm; closed August; September 10th – October 31st, 9am-8pm; November 20th – December 25th, 9am to 8pm. Regular daytime hours do not change the character of the neighborhood.

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 Code requirement would force the product to be far beyond the house, near the garage making it nearly impossible to sell products because of the size and slope of the lot.

- 3. The requested area variance is substantial.

Justification: The variance is substantial but due to the size and slope of the lot there is not another practical way to sell product.

- 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 same area has been used before to sell goods and the physical conditions of the lot will not be altered.

- 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 Michael Reinhardt,

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application of Wendy May, requesting a front setback 25 feet from the edge of pavement at 7238 State Route 96 for an open display, which includes a tent, to sell seasonal plants and garden items and a zero foot side setback with 7224 State Route 96, whereas Schedule II Area and Height Requirements for Commercial Districts require an 80 feet front setback and a five foot side setback BE APPROVED:

This resolution was put to a vote with the following results:

Michael Reinhardt	Aye
Mathew Nearpass	Absent
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Adopted: 4 Ayes, 0 Nays

RESOLUTION – 7224 State Route 96 Front Setback Variance:

WHEREAS, an area variance application was received by the Secretary of the Zoning Board of Appeals on April 20, 2018 from Wendy May, 7238 State Route 96, Victor, NY 14564 requesting a zero foot front setback at 7224 State Route 96 for an open display, which includes a tent, to sell seasonal plants and garden items and a zero foot side setback with 7238 State Route 96, whereas Schedule II Area and Height Requirements for Commercial Districts require an 80 feet front setback and a five foot side setback; and,

WHEREAS, the owner of 7224 State Route 96, Victor Associates LLC, has entered into contract with Joseph May, owner of 7238 State Route 96, to use a parcel of land where the May property joins the Victor associates property. The tent, which will have plants and garden related items for sale will span both properties; and,

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on April 29, 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 a Class 1, referral no. 66-2018, and reviewed it on May 9, 2018 stating it was to be returned to the local board with comments; and,

WHEREAS, at the May 7, 2017 public hearing the Board discussed with the applicant the option of placing the open display no more closer to the road than a line from the front line of their house, which would be the porch, that extends across the property parallel to the road. This "line" would also extend onto 7224 State Route 96. On May 14, 2018, Al Benedict, Code Enforcement Officer, measured that distance to be 25 feet from the pavement edge; and,

WHEREAS, Public Hearings were held on May 7, 2018 and May 21, 2018 at which time no resident spoke for or against the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact

for a zero foot front setback at 7224 State Route 96 for an open display, which includes a tent, to sell seasonal plants and garden items and a zero foot side setback with 7238 State Route 96:

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: It's a commercial area, there is a lot of commercial activity and selling flowers and nursery products will not change the character of the neighborhood. A line 25 feet from the pavement edge gives enough space so that the product is not close to the road and there will be enough space for motorists driving by, entering or exiting the property to have proper line of sight. Flowers were sold at this property in the past helping to define the character of the neighborhood. It is a seasonal operation: Closed in January; 9am to 7pm February 8 – February 14; March and April depending when Easter falls open for ten days 9am -7pm; May 1st through July 10, 9am to 9pm; closed August; September 10th – October 31st, 9am-8pm; November 20th –December 25th, 9am to 8pm. Regular daytime hours do not change the character of the neighborhood.

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 Code requirement would force the product to be far beyond the house at 7238 State Route 96, near the garage making it nearly impossible to sell products because of the size and slope of the lot.

3. The requested area variance is substantial.

Justification: The variance is substantial but due to the size and slope of the lot there is not another practical way to sell product.

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 same area has been used before to sell goods and the physical conditions of the lot will not be altered.

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 Wendy May, requesting a front setback 25 feet from the edge of pavement at 7224 State Route 96 for an open display, which includes a tent, to sell seasonal plants and garden items and a zero foot side setback with 7238 State Route 96, whereas Schedule II Area and Height Requirements for Commercial Districts requires an 80 feet front setback and a five foot side setback BE APPROVED:

FURTHER RESOLVED that the following condition is imposed:

1. This resolution is only valid if the property owner at 7224 State Route 96, has given permission to the property owner at 7238 State Route 96 to use a portion of the land at 7224 State Route 96 and has signed an agreement to that effect. The annual lease agreement must be sent to the Town of Victor Planning & Building Department or this variance is null and void.

This resolution was put to a vote with the following results:

Michael Reinhardt	Aye
Mathew Nearpass	Absent
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Adopted: 4 Ayes, 0 Nays

RESOLUTION – 7238 Mays Sign Front Setback Variance:

WHEREAS, an area variance application was received by the Secretary of the Zoning Board of Appeals on April 20, 2018 from Wendy May, 7238 State Route 96, Victor, NY 14564 requesting to place a business sign one foot from the right-of-way whereas, Section 165-4B(6) requires 35 feet from the pavement of the public right-of-way; and,

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

WHEREAS, on May 14, 2018, Al Benedict, Code Enforcement Officer, measured the distance of the proposed sign and determined that the sign was proposed to be at 18 feet from the pavement edge; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on April 29, 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 a Class 1, referral no. 66-2018, and returned it to the local board on My 9, 2018 stating they would return it to the local board with comments; and,

WHEREAS, Public Hearings were held on May 7, 2018 and May 21, 2018 at which time no resident spoke for or against the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for a sign setback 18 feet from pavement edge at 7238 State Route 96 that does not meet the required 35 feet from the pavement of the public right-of-way requirement:

2. 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: It's a commercial area, there are a lot of commercial activities and commercial signs in the neighborhood. There will be good line of sight going both north and south on Route 96. Neither a resident nor the Ontario County Planning Board were opposed to the application.

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: Temporary A-frames can be blown into the road and would need longer legs on one side because of the slope of the land. A sign on the house or barn would indicate that products were in these structures which is not the case for the house and only Valentine's Day products are sold in the barn in February.

3. The requested area variance is substantial.

Justification: The variance is substantial but due to the size of the lot there is not another practical placement of the sign. Placing the sign farther back would put it in the parking area or the display tent with products for sale.

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

Justification: There is a limited natural areas that will be altered by the sign placement and landscaping is proposed all around it.

- 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 Wendy May, to install a sign with 18 feet from the pavement edge at 7238 State Route 96, Victor, NY 14564, whereas Section 165-4B(6) states a freestanding sign shall be no closer than 35 feet from the pavement of the public right-of-way BE APPROVED:

This resolution was put to a vote with the following results:

Michael Reinhardt	Aye
Mathew Nearpass	Absent
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Adopted: 4 Ayes, 0 Nays

- 3. SONG HILL WINERY 521 County Road 9 8-Z-2018
A request to amend the May 6, 2013 Use Variance Resolution for Song Hill Winery, 521 County Road 9, (6717 Song Hill Lane) Victor, NY to allow farm marketing activities for the public. The Town is proposing an Agritourism Code with definitions for Ag Events, etc.; the intent of which is to maintain, preserve and promote the rural character of the Town of Victor.

Chairman Reinhardt –Conor Gallagher, hello. You are looking for an amendment to the conditions of the use variance that was granted May 6, 2013 for Song Hill Winery, 521 County Road 9. Is that right?

Mr. Gallagher – Yes, although I did read the letter that Al Benedict, the Code Enforcement Officer wrote regarding the matter. After speaking with him a little bit further, I do not have an opposition to his proposal to rescind it. I'm prepared to talk about the amendment if the Board wants. Whatever is the easiest course of action?

Chairman Reinhardt – I read Al's comments. I've read the section in the Ag & Markets regulations. In a nutshell, and Al correct me if I'm wrong, but what is happening here is when you made your original request, you needed the use variance to conduct the business as is. There were a number of conditions the Board imposed on you and you were in agreement with that. Now, with the current Ag rules and regs, it almost appears that the variance that you obtained puts you in a worse position than you would be if you just came in today. You may not even need a variance. Is that in a nutshell what is happening?

Mr. Benedict – That's correct.

Chairman Reinhardt – I've asked the Town's attorney to give an opinion on what happens in that situation. What is the procedural mechanism? Is there an amendment or is there some type of way to rescind this? I can't tell you what that is. We've heard back from the attorney and they need a little bit more time to determine the legal mechanism that needs to occur here so that you are not put into a worse position than you are right now by asking for the variance back in 2013. I can't tell you when the attorney is going to let us know but unless you want to add something it sounds like you are on the same page as Al. If the Board has questions they may ask them but I'd like to see and hear what the attorney says on what is the procedure on what happens next. It could be here is the procedural mechanism so that you can go about doing what you want to do or it could be no, there needs to be an amendment. I don't know what that procedural mechanism is.

Mr. Gallagher – I had talked with Debby about pushing the whole thing back and she said it was important for me to come here in case anyone had questions, addressing public comments, anything like that.

Chairman Reinhardt – I'd prefer to wait and hear from the attorney. Depending on what that attorney's decision is or what the recommendation is, will determine what my questions will be to you. There could be no questions or a bunch of questions. It depends on where we are as a Board and where you would like to be, but I'm not going to stop anyone from asking questions. Al, would you like to comment any further?

Mr. Benedict – The most important part that has changed here is that the applicant has applied for the County Agricultural Zoning and the property in question has been added to that. That is now under the protection of the Ag and Markets Laws which allows him, through the guidelines, laws, and interpretations that Ag and Markets have provided in their guidelines defines what a farm operation is and to what extent he is allowed to market it.

In addition, the Town is working on an Agritourism Code that enhances or promotes farming and farm products. Eventually it would allow you to do this if drafted in a similar form right now it would allow the applicant to do this.

Mr. Gallagher – Just to add to that for the Board’s knowledge on the history of that. After a long discussion with Maria Rudzinski who is in the Ontario County Planning Department, we applied to be added to the Agricultural District in October 2016. The Ontario County Agricultural Committee reviewed the application and came back to us with some more questions and some follow-up information. Then they decided to recommend that we be added to the Ag District. They reached out to the Victor Town Board. We had two Town Board meetings on the matter. One of which I presented, one in which the Town Planning Department presented and Maria Rudzinski came down and presented in favor of us and so the Town Board agreed with the County’s Agricultural Committee’s recommendation. After public hearing the Ontario County Legislator approved adding the property to the Ag District and in July the New York State Department of Ag and Markets officially added us. I included in my materials the backup for that. That is the big difference on the property from when we originally got the variance; we are now part of the Ag District.

Chairman Reinhardt – I do appreciate your patience. Hopefully you understand, depending on what that legal opinion tells us is going to drive what the Board does next.

Mr. Harter – From the time I’ve been on the Board, we’ve only rescinded one variance in my recollection and that was done under the direction of input from the attorney. So I think in terms of process and procedure that’s a safe play on the part of the Board.

Chairman Reinhardt asked if there was anyone from the public who wished to speak.

Daniel Green of 520 County Road 9 addressed the Board.

Mr. Green – My property is across from the Song Hill property. I’m new to the neighborhood, we recently purchased the property. We are going to build in the next couple of years. We got a notice that he wanted to do some sort of festivals and I just wanted to know what was going on.

Chairman Reinhardt – Any questions you have for us?

Mr. Green – We are just trying to get a sense of what it is he’s trying to do.

Chairman Reinhardt – Did you go on-line and look at the application?

Ms. Trillaud – The application is not on line, they have to FOIL it.

Chairman Reinhardt – Do you know what a FOIL request is?

Mr. Green – Freedom of Information.

Chairman Reinhardt – That’s right, so you can do that with the Town or you can spend some time with the applicant and ask him what he wants to do.

Mr. Green – I was planning on introducing myself.

Chairman Reinhardt – OK, very good. I think that’s a great idea and a good neighborly thing to do. Great. Anyone else want to add a comment?

Robert Klein, 523 County Road addressed the Board.

Mr. Klein – 523 is right next to Song Hill Winery. Back in 2013 when Mr. Gallagher came in front of the Board you were very specific with what he could do. My understanding is now, a lawyer is going to say oh yes, the law is changing and you will rescind it. You are saying you are rescinding his variance and removing his restrictions.

I have applied and applied under your rules to have my house built. I paid money for that. I would like then, to refund my money. If you are just going to change what it is, then you owe people money for what we’ve applied for. I operated in good faith in front of the Board. The Board, I’m sure is operating under good faith. You were talking about a FOIL act. The first I heard about this change again was through the mail. I don’t know what a FOIL act is. Mr. Gallagher doesn’t bother to come over to my house and knock on the door and say, hey, I’m your neighbor from ten feet away. My bedroom window, and I had to get a variance for it, is ten feet away from the property line; as close as it can be. They don’t even bother telling me that they are digging in their yard. Fine, it’s their business. Flags down and I get a thing in the mail saying you are going to change the rules or vote to change the rules. It’s your responsibility to stay by your decision. That’s what a contract between me, the Board, and the Town is, not to change it.

Chairman Reinhardt – I’m waiting for you to finish and then I’ll comment.

Mr. Klein – At this point I’m finished.

Chairman Reinhardt – This Board did not change any rules. The Ag and Markets rules and regulations, those rules changed. When we first looked at this variance we were looking at the 2013 rules and regs, as well as the Town Code. He needed a variance. We looked at all the conditions; you were here for those variance meetings. We looked at the criteria and evaluated and put a number of conditions to the use of that property. As far as I know, he complied with them. With Ag and Markets the rules changed, in certain terms to his benefit. We didn’t change the rule. The question we have for our attorney is what happens? It appears from my vantage point, that going by the current rules and his variance that was granted, puts him in a worse condition than he would have been if he just came in today and he wouldn’t need a variance. So he’s worse off by having the variance on that land.

Mr. Klein – My point was because of coming in front of the Board and asking and you giving him a variance, I then become worse off. I now have, if these variances are given, I have a six year old son. I’ll have people buying liquor or wine right next door to me all of a sudden. Originally it was supposed to be for a bottling process only. I don’t know what he’s going to do, all I know is what was given to me on the postcard and here I am. They are going to do a farm

market of sorts. A parking lot, more traffic, selling of alcohol. That changes it from a residential neighborhood to a commercial neighborhood. It's your responsibility to make that not happen. You're the Board. Otherwise, why did I pay my fees to build a house? Why did I follow Code? Why did I bother to spend the money to adhere to the Town's regulations?

Chairman Reinhardt – This Board does not write the law, the Code to be specific. All this Board does, it's a quasi-judicial branch of the government. People come in, whether it be for an area or use variance, looking for some flexibility in the Code. What they are saying is, I need an exception to the rule and there are the criteria that we look at. We don't make these rules and regulations. We have applications in front of us. If you have a concern, a complaint, certainly you can write to the Town, lay out your complaint and concerns, presumably they would address it.

Mr. Klein – Who would be enforcing the Code?

Chairman Reinhardt – The Code Enforcement Officer is the enforcer of the Code. The Code book is large...

Mr. Klein – So if someone was to go against Code, what would they do? What would be the enforcement?

Chairman Reinhardt – Any resident can go to the Code Enforcement Office and say I think this Code is being violated. Whatever observations you make, you let the Code Enforcement Officer take a look at it and then the Code Enforcement Officer, if there is a violation of the Code, then lets the homeowner or resident know they can't do what they are doing and tell them they need a variance. There are certain mechanisms the Code Enforcement Officer has, but most of the time it's "you can't do this, you need a variance".

Mr. Klein – Is he an officer of the law. Does he have the authority to....

Chairman Reinhardt – He's not an officer of the law, he's a Code Enforcement Officer, he's a public servant; he works for the Town.

Mr. Klein – I'm asking what his legal ability is. From earlier, if the applicant wanted to build said fence and she said I'm not paying you because I know they are going to change whatever in the future and I'll be worse off. She builds the fence. What mechanism do you as the Town have to force her?

Chairman Reinhardt – It sounds like you are asking for legal opinion. This Board cannot give you a legal opinion. If you want one, you have to go find an attorney and ask those questions.

Mr. Klein – This Board has no way of enforcing, you're saying. I'm asking.

Chairman Reinhardt – The Zoning Board does not enforce the Code as I think you are describing. The Code Enforcement Officer does that.

Mr. Klein – That’s what I’m asking, how is he able to enforce?

Chairman Reinhardt – You can open up the law, talk to an attorney, but for me to try and describe and provide a legal opinion is inappropriate.

Mr. Klein – We’re on a tangent and I’m trying to lead you to where I want you to go and you are very good at not going where I’m trying to get you to.

Mr. Gallagher – You can talk to me and diffuse the situation.

Chairman Reinhardt – I don’t want this to be an open season for what it is that you are doing. I think this Board has been clear where we are right now, we aren’t going to do anything today because it’s important for this Board to obtain a legal opinion on what the next step is. I think we’ve summarized what the issue is, but until we have that legal opinion, . . . it could be a short meeting, that he can do what he wants to do because the law allows him to do it or it’s going to be a long discussion and he is going to be stuck with that variance and we have to explore whether or not there is any more flex that can happen with that variance. I don’t have an answer for you tonight.

Mr. Klein – I’m asking if I can be notified then of that decision. I personally have cancer, I’m showing you my cancer card. I do not have the ability or time to chase a lot of stuff around. If the decision comes down, I’d like to be informed before it comes to another meeting like this.

Ms. Trillaud – Would you give me your email address?

Chairman Reinhardt – Do you have an email address we can contact you at? How do you want to be contacted?

Mr. Klein – Phone is the best.

Mr. Klein gave his telephone number.

Mr. Harter – Al, relative to your highlighted comment where you indicate what has taken place in terms of the district being created. In listening to this gentleman speak and thinking about the variance that we granted two years ago, even though they gained the status that is identified here, that status is with our use variance. Does this necessarily supersede the use variance or is the use variance still enforced and if it is more restrictive than controlling?

Mr. Benedict – I would say that at this point in time the use variance is overly burdensome for a farm operation. If Ag and Markets reviewed it they would say it’s overly burdensome, you need to do something about it. I don’t know if the mechanism is for striking it down or making us change it. They have attorney’s that can pursue this.

Mr. Harter – That is something I’d like to know the answer to as we are getting the feedback from the Town attorney.

Mr. Benedict – It is an Ag and Markets law that the municipality cannot form laws or codes that are overly burdensome to a farm.

Mr. Harter – Right, but in terms of timing, the use variance came first.

Mr. Benedict – Correct, but things changed and now he can do what he is requesting, so it is my opinion that now that use variance is overly burdensome because it has criteria that limits him in certain operations that are allowed per Ag and Markets laws. If and when the variance is rescinded, the applicant is still obligated to go to the Planning Board for review. The Planning Board is still charged with overseeing public health, safety, and welfare. So he's not going to just have a wild party every single weekend. I would imagine it would be limited in time. They would look at things like noise, parking, hours of operation, how often he's going to do it. Certainly our department can advise you to when that meeting is as well.

Mr. Klein – Thank you. I understand the law and again, I heard clearly when I stated the first time, do what he wants on his own property, it's part of your right, but I also have a kid. This changes the value of my property. It affects my property. Business to businesswise, I'm worse off. So it comes down to he's worse off or I'm worse off.

Chairman Reinhardt – As I indicated before, I'd recommend this to anybody, if you feel you've been wronged or something isn't right, talk to counsel. Tell them what is happening, what can I do, what are my remedies? This Board can't give you what those remedies are.

Mr. Klein – I can understand that but again counsel costs money. Earlier you said be neighborly.

Chairman Reinhardt – You can certainly talk to your neighbor.

Mr. Klein – I've been home and there has been opportunity for him to come if we wanted to. That's a different conversation.

Chairman Reinhardt – OK, I wish you well.

What we are going to do then is table this. I don't have timeline on when we are going to hear back from counsel, but as soon as we do, we can schedule another meeting and then figure out what we're going to do with this application.

Mr. Harter – So do we need a motion to table this application.

Chairman Reinhardt – No, we don't need a motion to table it, we just did. Unless there is somebody opposed to it. Any further discussion or questions from Al.

On a motion from Donna Morley, seconded by Michael Reinhardt it was unanimously agreed and RESOLVED, that the meeting was adjourned at 8:38 PM.

Debby Trillaud, Secretary