

A regular meeting of the Town of Victor Zoning Board of Appeals was held on June 4, 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

ABSENT: Fred Salsburg

OTHERS: Al Benedict, Code Enforcement Officer; Andrew Spencer; Richard Camping; Robert Klein; Conor Gallagher; Janet Gallagher; 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 21, 2018 be approved as submitted:

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

Approved: 3 Ayes, 0 Nays

PUBLIC HEARINGS

1. O'CONNELL ELECTRIC - Area Variance 9-Z-20180
830 Phillips Road

The applicant is requesting an area variance to allow the construction of an addition to an existing building with a front setback of 50 feet whereas Schedule II, Area & Height Requirements indicates a minimum front setback of 80 feet. The property already received a 10 foot reduction of the front setback requirement in 1999 due to the Town of Victor purchasing 10 feet of property for road improvements.

The Chairman of the Board explained to the applicant how the meeting would proceed.

Chairman Reinhardt – I would like to touch on a couple of things. We do know that back in 1999 there was an area variance granted, ten feet in the front. What you are looking for is 20 more feet in the front for an addition.

The secretary read the legal notice as it was published in The Daily Messenger on May 27, 2018.

Andrew Spencer with BME Associates addressed the Board.

Mr. Spencer – With me is the Vice President of O’Connell Electric, Mr. Dick Camping. Any questions that I may not be able to answer, he would be able to answer.

I do know that this Board cannot make a determination this evening because we still need to go to Ontario County Planning Board for their initial review.

Just for background information, we have also made a submission for site plan approval as well as a lot consolidation approval. Back in 2018/2009 O’Connell Electric did a major expansion of the exterior portion of their site. Expanding into this lot here (*Plan on Easel Board*). They purchased this from the home owner, consolidated the lot, but apparently the consolidation plan never went into the Ontario County Clerk’s Office for filing. That’s because New York State had taken a couple of other “takings” along Route 251, so it was never finalized. So we will be going through that process with the Town Planning Board.

What we are asking for is that reduction to a 50 foot front setback. What I have highlighted here in yellow is a proposed front expansion. It’s roughly 19 feet in width by about 90 feet in length. This triangular portion right here is actually a covered canopy area. The reason for its positioning on the building is to get a better connection between the existing parking, visitor parking, and the front door. Right now the front door exists here right here in the building. Visitors must park around the side and then have to walk to the front. This will allow a visitor drop-off and visitor entrance point here. It also provides some additional space in the building that they require for expansion. They are looking for offices in the building as well as conference rooms.

They researched and did quite a long analysis of the building itself to try to determine if there were other ways to go about this. The rear of the structure is a two story high internal storage area that is not outfitted for internal office space so it’s not a great area to do any type of expansion. They looked at trying to go to the north with an addition to expand off the office space, but it does not provide them with the entrance that they want for the building.

As was said, the reduction from 80 feet to 70 feet was due to a taking by the Town for additional improvements on Phillips Road. It went from 80 feet down to 70 feet. Had that not occurred we’d be looking for a variance of less than that 50 foot setback; it would be 60 feet.

O’Connell Electric has been here in this facility since the early 1970’s: 1972/1973. This is their corporate headquarters. They do have other locations but this is their corporate headquarters. They’ve done upgrades to their other facilities to update them and that’s what they are trying to do here.

I did provide a letter with the five factors that you must give consideration to. I won't take all of the wind out of the room but I will answer questions you may have regarding the information I provided.

Chairman Reinhardt – What we can do so we are creating a record, which we need to do should the Board decide to grant the variance we need to have the justifications laid out, is summarize. As far as an undesirable change your point of view appears to be that the vegetation is going to remain and therefore the change will have a minimal impact. Is that fair to say?

Mr. Spencer – Yes, and all of the vegetation, there is vegetation all along the frontage here on Route 251, there are some major evergreen stands in this area, there are some major shade trees out in front and there is a hedgerow right on the north boundary. As you travel down Phillips Road, I provided the Board with a series of before and after vignettes showing what the addition may look like. Those vignettes were created to look at the building from your vehicle, but when you are driving down the road I don't believe you are going to get a chance to see the front of that until you are truly on top of it.

Chairman Reinhardt – If the Board decides to grant the variance are you willing to keep all that vegetation the same as a condition to granting the variance.

Mr. Spencer – Yes.

Chairman Reinhardt – The next criteria is whether or not there is another feasible method. You touched on a few of them, the Board may want to ask some other questions about that. Whether or not it's substantial; your estimation is approximately 30 feet. Your argument is that it is not substantial. Whether or not there will be an adverse physical or environmental impact and it's back to the vegetation; that's primarily what your argument is. Is it self-created? We can touch on that a little bit later.

With that we can open it up for questions from the Board.

Mr. Spencer – I do have large copies of the vignettes if you would like to see them in a larger format, but all this information was provided to you.

Mr. Harter – One question that came to mind when I listened to you speak is what is your neighborhood like in terms of other commercial buildings and their setback from the right-of-way?

Mr. Spencer – The structure right here on the southeast corner has a setback, which is enumerated in the letter, does have a setback of 52 feet to Route 251 and 70 feet to Phillips Road.

Mr. Neaprass – Which business was that?

Mr. Camping – It's an office building. It used to be the Cardi building. I'm not sure it's still called that.

Mr. Camping – It was DeFelice's building with Anthony Cardula.

Mr. Harter – So that's one building and that's 70 feet from the right of way?

Mr. Spencer – That's 70 feet from Phillips Road and it's 52 feet from Route 251.

Mr. Harter – And that's as measured from the right of way?

Mr. Spencer – That is correct and that measurement is taken via use of aerial photography and the tax map overlays and the boundary information that we had. All of this area right here is commercial. There are office buildings, commercial buildings to the north, right on Phillips Road and all along Phillips Road. Actually there was a structure that I struck from this letter because it was torn down, which had a setback of 52 feet from Phillips Road. It was part of the gravel pit area and has recently been taken down.

Other buildings have similar setbacks. Either in the 70 foot range, 52 foot range to Route 251, along this core right here.

Mr. Harter – I'm looking at your photo simulation drawings, which are helpful. You are basically proposing to retain the trees that are there. Are you proposing any other landscaping besides the existing or is it just going to be as is?

Mr. Spencer – Yes, we did provide the Planning Board with a landscape plan. A majority of the plants will be low in nature because of the windows that are being provided in front of the structure. The windows are relatively low to the ground, two to three feet off the ground, so we are proposing landscaping along those same lines as well; about two to three feet in height.

The other thing I forgot to mention as well, if I may, is part of the improvement here, and this is the rendering of what that structure would look like from a birds eye view. There is also a window section here. A raised clear story on this structure to provide illumination to the interior hallway that is being proposed. It will also help in disguising some of the roof top mechanicals that exist there today. When you drive down there are a few air conditioning units up there. This will actually help disguise that and hide those.

Mr. Harter – As part of your application you are merging those two properties together and you are going to do a lot line amendment or a subdivision merging the two. Is that correct?

Mr. Spencer – That's correct. It was approved back in 2008.

Mr. Harter – With the merging of the two parcels I assume you have adequate green space as far as the Victor zoning is concerned?

Mr. Spencer – Yes, we have roughly 43% green space on the property.

Mr. Harter – So although you are increasing some land coverage for this building, you are still staying within the Town's criteria for the percentage for open space?

Mr. Spencer – That is correct.

Ms. Morley did not have any questions.

Mr. Nearpass – What were the other alternatives. Can you talk about those a little bit?

Mr. Camping – I'm the Vice President of O'Connell Electric. I've lived in Victor since 1984; raised all my kids here and lived right around the corner from this building prior to building a house that Scott helped me with the site engineering on School Road.

We definitely did look at other alternatives. I personally championed this cause. As we analyzed and are in the process of updating the entire building; mostly, the work inside is cosmetic in nature. We are trying to establish a corporate flagship on par with what I've done for the company in Syracuse, Albany, and Buffalo where I've built complete new buildings. Syracuse was a complete gut rehab pharmaceutical building. Buffalo was complete brick and mortar from the ground up. Albany, we bought a business and remodeled that entire building inside and out. Our satellite offices have state-of-the-art, on trend designs and functionality. We are way behind the curve at our corporate office. That's the impetus for us to need to A) expand and B) update the building for the satisfaction of our employees that work here. All we hear is how nice the other offices are and how stuck in the 80's we are here. That is the premise.

The reason we went out the front this time is it gives us a chance to really change the look of the building from the road, the curb appeal. We'd like to start using some of the elements that are found in our other buildings that kind of give us a uniform brand and appearance.

Additionally, we did look at going to north about the same size or maybe a little bit deeper, but even going to the north required a variance because we encroached on the side setback. So we'd need a variance if we went to the north with much less benefit to our company and to the employees that work there. Another reason we went out front is the people that are housed in the existing building right here are the ones who need to grow. HR, our human resources division because we are growing leaps and bounds. Historically we have been growing 10% a year. This year we grew almost 18%. We did 225 million but we expected to do a little bit

less than that. So we've had a bumper year. We've employed another ten people in the last month and a half and I've got nowhere to put them until this entire remodeling process is complete. I also neglected to tell you that we have a Henrietta office that I remodeled five years ago. We just bought the property next to it. It's a 22, 000 square foot warehouse and we are moving our construction division and our prefab to Henrietta to free up some more space internally in this building. Even with that inside space we still need that addition to fulfill the footprint we need to find housing for all of our employees that are assigned to the corporate office. I'll be a little bit selfish in my presentation. Obviously it's a kind of an on trend look. These conference rooms are imperative to us at that end of the building and we don't have any areas that we can expand. We do have an internal conference room right back here. That is going to be expanded and tied into this lobby area if you will. We need that for visitors that come in. That's where needs are. Yes, it is self-inflicted. Happily I can say it's self-inflicted because we are growing leaps and bounds and that's the real force for us needing to find space. We love Victor, we love the area, the location, the property. In a different world I would love to implode the whole place and start again with a corporate plant that would really be something to look at but that's just not going to happen. The cost of that is impossible; we don't have those kind of funds. Really we don't think it's going to do anything but improve the neighborhood. There is no residential nearby other than on Route 251 and that is a Commercial/Residential in fact.

Mr. Spencer – I believe it's actually still zoned Light Industrial.

Mr. Camping – The overhead door company used to be there in the barn which is directly across from Route 251 at Phillips Road. Our plan doesn't show it.

Mr. Nearpass – Is the barn kind of leaning?

Mr. Camping – Yes.

Mr. Nearpass – So it's really a 20 foot setback that you are seeking, not 30 feet, because of the 10 feet that was taken.

Mr. Spencer – That's correct because it's been established at 70 feet at this point.

Mr. Nearpass – And that is something the Town recognizes as existing?

Chairman Reinhardt – Yes, we are looking at it as a 20 foot variance that they are seeking.

Mr. Nearpass – So you are good with 20 feet, not 21 or 22 feet?

Mr. Spencer – No, we're good.

Chairman Reinhardt – So why haven't you, or have you, explored the south?

Mr. Spencer – This is the main entrance way into the site right now, visitor parking and these two zones right there. By expanding to the south it would then start to push parking farther away and then we would disturb more areas. We are trying leave this loop road as it exists today in place.

Chairman Reinhardt – So it's possible, you can put that to the south? We're trying to figure out if there are feasible alternatives or we're trying to minimize the variance. To explore it to the south, I see that you would be taking parking spaces and/or having to create more parking spaces and/or taking away greenspace, but those are avenues that need to be explored. With that, have you explored it and what kind of costs are you looking at.

Mr. Spencer – I know Dick can do a far better job at this but let me try.

The way the internal make of the building is; we have the main entrance way right here and the president and vice-presidents offices are here. HR is up in this location and farther down you get into other offices and smaller cubicles and a different type of setup. This is also a two-story portion of the structure. To change the front entranceway from the front of the building to the side of the building would require so much more internal change and re-doing. Just from the financial standpoint it doesn't make sense.

Chairman Reinhardt – Since we have to wait anyway, I think it would help the Board if we saw a floorplan to better explain what it is that you are telling us. I do believe you, but if we create a record with another internal footprint, it's going to make a lot more sense to us and even some of our engineers here, - they can say, OK now it makes sense, that's really where it should go.

Mr. Camping – We have it; we don't have it with us, but we do have it. It's part of the analysis that I went through with our architect. (*to Mr. Spencer*) You did a very good job on it, I'll just put an embellishment on it.

To coin a phrase of the development industry which I come from – this is our front of house, this is our back of house. The people that reside here and do the lion's share of the work – this is just, as Andy said, very difficult to rearrange the flow of the building. All the public spaces are over here already. We aren't looking to make wholesale changes to the guts of the building. This is more of a remodeling internally. We'll paint and cover, the hallways are going to stay where they are.

The other problem I have with this building, which any engineer or architect is going to appreciate. These are all bearing walls where you see these different *inaudible*. This building was that big (*first section on plan*) when it started. Then there is a bearing wall here. Then they built on and built on and built on

Chairman Reinhardt – I have to get you to slow down a little bit because the recorder doesn't understand this and this and this. To describe what you were doing is that the original building was in the north east corner and the load bearing walls were running east and west. As the building grew, it grew to the south.

Mr. Camping – And every move left us another bearing wall that used to be an exterior 12 inch block wall. I virtually have a barricade of these three walls through the core of the building. They are very difficult to deal with. They support the roof. We've analyzed where we can do archways and openings and everything requires steel beams and columns and foundations. It can become very costly.

Chairman Reinhardt – Al, the numbers they were talking about, about the neighbors being about 52 feet, do those numbers sound right?

Mr. Benedict – They are correct. That building did receive variances for those setbacks.

Mr. Nearpass – Is that the Entropics building?

Mr. Camping – Yes.

Chairman Reinhardt – As you know we have to wait for the County's comments.

The Chairman asked if there was anyone from the public who would like to speak and there was no one.

Mr. Reinhardt – Brian Emelson, Town of Victor Recreation Director, sees no issues with the project. 830 Phillips Road is within 500 feet of the Lehigh Trail.

Mr. Spencer – I know that Al had sent a memo to you, looking for the Board to take a look at Code Section 211-27.1. I just wanted to give a little bit of clarification on the three points within that Code Section.

Al, can I ask you a question about this, because it says "allowed by the Planning Board".

Mr. Benedict – In the Code it says if you are going to reduce a front setback whether it be the Planning Board through clustering or the Zoning Board through a variance, there are three guidelines either of the Boards are to consider first when making their decision.

Mr. Spencer – Those three are whether or not there is a need for a future service road or road widening. At this point we are not aware of any further widening of Phillips Road and/or State Route 215.

The second is that the building frontage on Route 251 is less than 25% of the parcel of the Route 251 frontage. The overall frontage is about 1,025 feet. This section right here is roughly 700 feet worth of frontage. The building itself is roughly 125 feet in length. So we're looking at about seven or eight percent of frontage.

The third, at least 70% percent of the frontage along Route 251 have been planted. As I stated previously, this entire area is to remain in green. All the vegetation is to remain in this section.

Mr. Camping – At the end of the parking field there is just a little bit of berm that was built here. You could probably see through there years ago, but they built a berm and planted it. That is the only section that has a berm.

Chairman Reinhardt – What we usually have done is that we have to wait for the County, see what their comments are, discuss them accordingly, and then if the Board so chooses to grant the variance then fine tune the granting of the variance with certain conditions and I imagine one of the conditions will deal with the existing vegetation that is there. You will be back on June 18th and we'll have the decision by the County. Is there anything else you would like to add?

Mr. Spencer – I think that is it for now and then when we meet again I can go through this again if necessary or answer any other further questions.

Mr. Harter – Al, is the handicap parking that they show within the proposed 50 foot setback, is that subject to a setback distance as well? I seem to recall that we had a requirement that parking had to be a certain distance away.

Mr. Benedict – Yes, there is a requirement for parking to be set back 80 feet, but those spots were there on a previous site plan.

Mr. Harter – So this parking exists already and that parking? So it's pre-existing? (Yes). The only other comment I have, if you have to come back next time, which it sounds like you do, if you could give us a little landscape sketch of what you are proposing, the ground plantings that you are considering. It doesn't have to be exact but again something for the record that we can fall back on in our decision.

Mr. Spencer – Yes, I know the Planning Office does have a copy of that but I can forward copies.

Mr. Camping – One other comment, we do meet the parking as well without having to modify the lots as existing.

Mr. Spencer – Everything else does conform on the site except for the need of the front setback variance for this addition.

Thanks were given all around.

The Chairman suggested an executive session to discuss the Attorney-Client Privilege Memo addressed to the Zoning Board of Appeals. Scott Harter moved to go into executive session, seconded by Donna Morley and unanimously agreed upon. The executive session began at 7:30 p.m. The session ended at 7:53 pm and was closed by a motion from Scott Harter, seconded by Matthew Nearpass and unanimously agreed upon.

2. SONG HILL WINERY 521 County Road 9

8-Z-2018

Carried over from the 5/21/2018 meeting

Originally 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 property of Song Hill Winery is now in the Ontario County Agriculture District #1 and the New York State Agriculture & Markets law allows farm marketing activities. The Zoning Board of Appeals would proceed with a discussion regarding either rescinding the original use variance or possibly amending the original use variance.

Chairman Reinhardt – As you figured out, we went into executive session because there was a memo from our attorney laying out the options of what we can do here. In a nutshell what we can do is this Board can revoke the use variance or it can modify it. If we revoke it the County doesn't have any say in it whatsoever. If we modify it, because it is a Class 2, the County does get to weigh in on it. Because of the nature of this and because it's so new as far as what has changed with the Ag district, and what you have done, what you are doing, and what you want to do, we believe it's important to hear from the County on what they see happening Countywide. When does the County meet again?

Ms. Trillaud – The 13th.

Chairman Reinhardt – By the time of the next meeting we'll have their opinion on what it looks like for you, and even other situations like you. They are going to make recommendations with what they think we should do. It doesn't mean that we have to go along with them. It's just an opinion. They are an advisory Board. We make the decision here. At that point then, when we see what their advice is then we can figure out what we are going to do with it. Do you have any questions on that?

Mr. Gallagher – No, you have to hear from the County before you make your decision.

Chairman Reinhardt – Right, and again weighing out whether it’s going to be modified, to what degree, or revoke it.

Mr. Gallagher – Is the memo from the attorney public?

Chairman Reinhardt – No, that’s why we went into executive session.

Mr. Gallagher – I don’t know if you have any questions for me?

The Chairman asked if the Board had any questions and since Mr. Nearpass was not at the last meeting he was specifically asked.

Mr. Nearpass – I think I’m all set. In general it is now different than it was a couple of years ago. You have a grape growing operation.

Mr. Gallagher – Yes, the process was in the fall of 2016, after talking with Maria Rudzinski at the County Planning Department, I decided to apply to be included in the Agricultural District which is adjacent to our property. After that we had two Town Board meetings in which the Town discussed it, they brought Maria in to discuss what it meant. At the time, Katie Evans was the Town Development Director and she presented in support of it and there were no objections at the Town level so the Town told the County that they were in favor of it. Then the County held a public hearing and there was no opposition so then the County added us to the Agricultural District.

Mr. Nearpass – And the public also had the opportunity to weigh in at those meetings?

Mr. Gallagher – Yes, there were two Town Board meetings and then there was one County Public Hearing.

Mr. Nearpass – But before, when you were in front of us the first time, you weren’t growing. Was that the difference?

Mr. Gallagher – No, we started planning in 2014. I think we got the Use Variance in May of 2013. It was just a little late for me to start planting. I didn’t start doing any of that until I had things cleared to run the winery operation.

Mr. Klein – Is Debby here?

Ms. Trillaud – Yes, right here.

Mr. Klein – Thank you very much for your help. Thank you very much for the information.

Ms. Trillaud – You’re welcome.

Mr. Klein – At this point I really don't have anything new to say. I got the information I needed and I guess it's going to come down to what he wants to do.

Chairman Reinhardt – As the Use Variance exists right now, it's more restrictive than what the Ag rules allow him to do. I'm not asking you to accept that you like it but that's how it is so this Board has to do something. We can, if we choose to, modify the Use Variance so that it's not unreasonably restrictive on what he is permitted to do by law ... or we revoke it and throw the whole Use Variance right out. We would like to hear from the County and see what they want us to know about the situation. We feel more comfortable about waiting to hear from them.

Chairman Reinhardt asked an audience member if they wanted to say anything.

Ms. Gallagher – No, I'm his Mom, so I'm all in favor.

Mr. Klein – I would also like to add that my tone at the last meeting was very confrontational and I apologize for that. Like I said I'm going to medical treatments and I was not having a good day and was extremely stressed.

Chairman Reinhardt – Understood and I appreciate your coming in and letting us know what you think. If we don't have people coming in and letting us know what they think, it makes our job a little harder.

Mr. Harter – What types of activities take place on the property right now that you object to and what items are you potentially objecting to?

Mr. Klein – Right now, ... I get a lot of traffic up my driveway, particularly in the beginning, it was at least every other day when "they" were figuring out where he was located.

Mr. Gallagher – Because I'm not allowed to be in public, I don't have any signage. Some people just find us on line and assume I'm open.

Mr. Klein – Yes, I've had people come to the door. I've had delivery trucks come.

Mr. Gallagher – You had a delivery truck come?

Mr. Klein – Yes, acid, whatever you use, that powdered acid.

Mr. Gallagher – Get out! Because I called them and I said I never got this.

Mr. Klein – Sometimes I get your bills. I just usually stick them over there.

Mr. Harter – Based on what you are saying is it reasonable to think that with a little more formality to this, based on what you are doing, that those things will go away? Signage will be permitted and it may be more evident that you are actually there versus an open field?

Mr. Klein – That’s part of it. Like I said, I’m sick, I’m not working. I’m not going to go back to being able to work. I haven’t been able to work since I built the house and hurt myself fixing the house up. My house is my legacy. I have a six year old son. Whatever happens to the value of that house is what I leave him. If it’s going to drop, I spent almost a half a million dollars fixing that house up. If I don’t get that half million dollars or more out of it, if it gets knocked down to 250,000 because of a parking lot next to my yard or in or near my backyard; lights or limos coming up. I used to do it on Route 14, you take a Booze Cruise and tour the wineries and you drink and so on. If I have that kind of activity next door to me, that in my opinion is going to affect the value of my home. If I’m going to lose the value of my home, I’m going to spend the money that I’m going to lose trying to stop it. Right now that is the stress for me.

Mr. Harter – Have you had a chance to speak with the applicant?

Mr. Klein – We were talking outside of the meeting room. He said that he has tried to come over but I’m not there in the afternoons.

Mr. Gallagher – Just to add from my part, this is all stuff that will be hashed out with the Planning Board, depending how this Board resolves things. If I can be open to the public, it’s got to be within the size and scope of my operation. It can’t be too big. It is something that I will be working with Al and the other Code Enforcement Officer’s very closely on. I’m happy to make sure that we bother you as little as possible.

Ms. Gallagher – Can I just say that this is my parent’s property and it is their legacy as well. It was never a place that I can ever imagine being a “Booze Cruise”. That isn’t what any of us, and certainly Conor, has ever wanted. This came about because Conor is a wine maker and because they had that property. This is a family friendly everything. We certainly never intended, any of us, to bother any neighbors at all, especially with children. The children are there when we have these festivals. We always have food. I understand your concern which was actually Conor’s concern as well. The truth is there is really no profit when you get the big busses in and all that. They just drink samples of wine and they don’t really buy. That has never been anyone’s intention. I can understand how you may have felt but this is also my parents’ legacy and that is really why Conor is there.

Mr. Gallagher – We want to keep it from being developed.

Thanks were given all around.

The Board had a discussion regarding the County and the Song Hill Winery request regarding the Use Variance. In general, it seems necessary that Town Code will need to catch up to the Ag & Markets requirements.

On a motion from Michael Reinhardt, seconded by Mathew Nearpass, it was unanimously agreed and RESOLVED, that the meeting was adjourned at 8:10 PM.

Debby Trillaud, Secretary