

A regular meeting of the Town of Victor Zoning Board of Appeals was held on June 18, 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; Mathew Nearpass, Vice-Chairman; Donna Morley; Scott Harter; Fred Salsburg

OTHERS: Ed Kahovec, Town Board Liaison; Al Benedict, Code Enforcement Officer; Andrew Spencer; Richard Camping; Matthew Loomis; Conor Gallagher; Jodell Raymond; 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 Mathew Nearpass,

RESOLVED that the minutes of June 4, 2018 be approved as submitted:

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

Approved: 4 Ayes, 0 Nays

#### TABLED PUBLIC HEARING

O'CONNELL ELECTRIC - Area Variance 9-Z-20180

830 Phillips Road (Carried over from 6/4/2018 meeting)

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.

Chairman Reinhardt – I do appreciate you sending us the overview of the internal floor plans. It helps us understand what you are trying to do. The comments from the County Planning Board also arrived. It looks like it's a Class 1, however there are some comments. They are asking for

clarification if the proposed addition is 1,730 square feet but it looks like the Zoning Board request is 2,034 square feet.

Mr. Spencer – I can clarify that if you'd like. The addition is a 19 foot by 91 foot addition. That's the 1,730 square feet of enclosed office area. The remaining area happens to be the covered entry walk. There is a canopy that extends and would be within that front setback as well. That is why the 2,000 square feet was requested.

Chairman Reinhardt – All right, that makes sense. I believe that is what we were waiting for. Those were the two big pieces we were looking for. If there are questions from the Board, let's entertain them now. Donna, do you have any questions?

Ms. Morley and Mr. Nearpass did not have any questions.

Mr. Harter – On your site utility plan you show a dimension of 50 feet plus or minus. I just wondered are you sure it's 50 feet, is it 49 feet, is it 51 feet?

Mr. Spencer – Because I do not have the final architectural drawings to know where that eave is and know where the exact roof line is, we are looking for a relief to 50 feet. I believe the structure will be greater than... it will be 51 feet from the road.

Mr. Harter – So 50 feet is a good number to work with?

Mr. Spencer – Yes, I'm looking for a little bit of wiggle room as we build that addition on. If it's a six inch overhang or eave or something of that nature, it falls outside of what we are requesting.

Chairman Reinhardt – You are comfortable with, if the Board approves it, as a condition, 50 feet from the right-of-way.

Mr. Spencer – Yes sir.

Mr. Harter – Another question I have concerns about is the horseshoe entrance. I'm just curious what the additional connection to Phillips Road does for you. It would seem to me the *inaudible* part of it is the primary access in and out of the facility. Does the other entrance provide you with anything?

Mr. Spencer – It is a pre-existing condition on the site. We are not planning on doing anything with that, but it does provide for access to those handicap spaces right out in front. There is pull through traffic. It allows for a secondary point to get back out onto the roadway network. There

are trucks that come in and out of the main access road, so it does provide an area for visitors to come in if a truck is accessing to get through to the rear, there is another point of access to the front.

Mr. Harter – The handicap stalls that are shown there, you wish to continue to have them there because of the grade or they don't match in elsewhere better for a location or layout of the building?

Mr. Spencer – Yes, again it's a pre-existing use right there. O'Connell Electric is very comfortable with allowing them to be there. There is an opportunity to potentially move those spaces, and move them to the side, but right now they would like to utilize those as the handicap spaces.

Mr. Harter – How often are they used?

Mr. Camping – Every day. We have an employee that parks in one of those. The one farthest from the door right now, or most southern, she uses that every day that she is in.

Mr. Harter – I guess the reason I ask is because that jumps out at me. I mentioned in the meeting before that I understand that it's pre-existing. It just conflicts with my understanding, our understanding of the Corridor regulations which apply to this parcel. The Town of Victor, some time ago, established the 80 foot setback to not only the building but the parking as well.

Mr. Camping – I can tell you that cars right in front of our new entrance, they were given the approval to move forward here. That is something we haven't really studied yet. It would be just as close to move those down two spots right next to the new walkway that you see on the landscape plan.

Mr. Camping showed what he meant on an overhead plan.

Mr. Camping – They might even be considered a detriment in terms of appearances; two cars parked in front of a brand new entrance. Right now there is nothing there but landscaping. This (*the addition*) doesn't exist and the entrance is way over here.

Mr. Harter – That's really what I'm getting at. When I look at your photo simulations, you show a photo simulation before and after, neither of which show cars parked there. When you take a look at the purpose and intent of the corridor regs that are 80 feet, which were knocked down to 70 feet and now we're going to 50 feet...

Mr. Camping – Actually, you can see her car parked in that photo. It's kind of small but it's right there.

Mr. Harter – OK. My point is, if they could be relocated to another place and still function as well, I think removing them would be a benefit to the overall esthetics of that side of the building which you are obviously dressing up quite nicely. Is that something that you would consider doing?

Mr. Camping – Absolutely.

Chairman Reinhardt – Al, on that note, do you know if that is ADA compliant if those spots are moved? Those parking spaces need to be a certain distance from the doorway and if you move them too far away they may be noncompliant.

Mr. Benedict – That's not necessarily true. What you do have to do is provide an accessible path, a route, from the parking spaces to the entrance of the building.

Mr. Camping – I can tell you there are no grade issues, no curbs. Everything is flush and less than one in twenty.

Mr. Spencer – Sorry to interrupt, but we do need to take a look at that from a grade perspective because you must have a two percent grade for your access isle and for those parking spaces. So that would have to be researched to make sure the handicapped space could be moved over to that side. I don't know the grades off the top of my head on that parking area. That would have to be looked at to see whether or not we could indeed do that.

Mr. Harter – Do you other handicap stalls besides these two? Where are they located?

Mr. Camping – Yes, but I don't think they show on the picture.

Mr. Nearpass – There is one by the back door, right?

Mr. Camping – By the back door, yes.

Mr. Harter – Yes, I guess I see it on the aerial. So, I'm assuming you have some grading that satisfies that.

Mr. Camping – Yes, we modified this area to eliminate the curve. We can actually see it in this picture where we saw cut the pavement and regraded it so that there was a gradual incline to that,

still within specifications. We just put an elevator in when we did the addition, the second floor, meeting the handicap entrance.

Mr. Harter – My overall opinion of the application is we have a pre-existing nonconforming building that is proposed to be nonconforming with a result of this additional variance. Yes, there was a right-of-way taking. That was the first variance. When right-of-ways are taken there is usually compensation for the property owner for that taking. I think if the handicap stalls could be relocated and consolidated with the other handicap stalls, assuming the grade works for all the handicap stalls, it would reduce the nonconformity of your application in a positive way.

Mr. Camping – Sure.

Chairman Reinhardt – I'm liking what I hear from Scott. I would offer for comments and consideration is those handicap stalls potentially could block emergency vehicles, firetrucks, ambulances, what have you. So getting them away from that main entrance, still ADA compliant, but without blocking that main entrance; do you need to research that more or do you think it can be done? I ask that because if it's something you have to come back to with an answer, otherwise, I'm imagining what the Board is going to want to do is make a decision, but put that as a condition on moving those handicap stalls directly from the front entrance.

Mr. Spencer – This evening I cannot say emphatically whether or not they work as it sits or not. It is something that if it was a condition of this Board to approve the variance, we would have to do that research and find that out and be able to provide that information to the Board and also provide it to the Planning Board to satisfy the site plan approval process.

Mr. Salsburg did not have any questions.

Mr. Benedict – If I could throw in – in moving the handicap spaces, they may have to provide the accessible route through the building to the person's workspace. Where they are now may be more beneficial as an accessible route for that person to their workspace.

Chairman Reinhardt – Do I hear then that it could further complicate matters by moving them?

Mr. Benedict – It could, I'm not saying they shouldn't investigate it but I'm saying I don't know where the person works in the building, but it could cause an issue.

Chairman Reinhardt – What does the Board feel about those handicap stalls; on leaving them, moving them?

Ms. Morley – Have you gone to the Planning Board yet? (No)

I think they are fine there, I think site plan would take care of it. I'm OK with it either way.

Mr. Nearpass – I'm OK with it either way. I agree with the comments from Scott and Mike that yes, they would probably be best located right there on the corner, the first two stalls, maybe. I'm not an ADA expert, but if possible, I would prefer it. It's tough to have the data right. We're either going to send you on an errand to come back in three weeks to do this all over again or if time is of the essence, I'm OK with it as is. We didn't catch this last time and it's certainly not something that if we left it would change the character of the neighborhood. I think it's a previously existing-nonconforming type of situation.

Chairman Reinhardt – Fred, you've got some emergency experience, what do think about the issue?

Mr. Salsburg – I don't think from a fire perspective those two existing spots are a problem because I don't see the trucks coming in on that sharp curve. It's all open on the other side. It's as accessible as anything you would hope to have. It's only foot traffic that's going to be going around there, maybe pulling a gurney, but nothing big. The big stuff would have to be on the street or the big parking lot. I don't care if they move the spots or not from that perspective. I also don't think it would affect the appearance of the project from the street.

Mr. Harter – That's where I disagree.

Chairman Reinhardt – You certainly can, that's what we are here for.

Fred, if I have you right, you are in favor of approving the variance. We are going to put some conditions on it.

You are going to leave the existing landscaping; we talked about that last time. You are going to have some improved landscaping; lower landscaping, two to three feet high. (That's correct) I believe those are the only conditions so far. With that, you (Fred) are OK with approving the variance with those conditions and leaving the handicap stalls where they are.

Mr. Salsburg – I am.

Chairman Reinhardt – Scott, if I here you right, you're in favor of approving the variance with the conditions but you'd like to see those stalls moved.

Mr. Harter – Correct

Ms. Morley – I'm with Fred.

Mr. Nearpass – I'm with Fred on this one.

Chairman Reinhardt – Fred helped out a lot. I think that Scott has some decent concerns but I don't think we would like to hold up the variance on that particular issue. If you want good business practice you can certainly move them but I'm not hearing that we are going to make that a condition to the variance.

There was no one in the audience who wished to speak regarding the area variance request.

The Chairman stated that Brian Emelson, Town of Victor Parks & Recreation Director, did not find any problem with the requested variance. Also that the Ontario County Planning Board classified the project as a Class 1 which means the Victor Zoning Board of Appeals can decide how they want to.

RESOLUTION:

WHEREAS, an area variance application was received by the Secretary of the Zoning Board of Appeals on May 21, 2018 from O'Connell Electric, Dick Camping, 830 Phillips Road, Victor, NY 14564 to construct an addition to the existing building with a front setback of 50 feet from Phillips Road whereas Schedule II Area and Height Requirements require an 80 foot front setback for a district zoned Light Industrial; and,

WHEREAS, on November 8, 1999, the Town of Victor Zoning Board of Appeals approved a resolution for a ten foot reduction of the front setback requirement from Phillips Road due to the Town of Victor's request to purchase ten feet which was necessary for road improvement to Phillips Road and therefore the current request for the front setback is for a 20 foot variance rather than a 30 foot variance; 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 May 27, 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. 94-2018, and returned it to the local board on June 13, 2018 with comments; and,

WHEREAS, a Public Hearings were held on June 4, 2018 and June 18, 2018 at which time no resident spoke for or against the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearings and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for the construction of an addition to O'Connell Electric, 830 Phillips Road, Victor, NY 14564 with a 50 foot front setback, whereas Schedule II, Area and Height Requirements for Light Industrial Districts require an 80 foot front setback:

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: There are other business/industrial buildings in the area that have a similar issue and the front setback was already reduced by ten feet with a prior resolution. There is existing vegetation that provides screening to the building that will remain.

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 internal floor plan makes sense that the addition should go where it was requested to go. To be placed elsewhere does not make financial or architectural sense.

3. The requested area variance is not substantial.

Justification: The request is as efficient as can be for what is trying to be accomplished and it is esthetically pleasing.

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 existing vegetation screen to Phillips Road will remain, and again, there are buildings in the vicinity that have similar front setbacks.

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 Mathew Nearpass, and seconded by Donna Morley:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application of O'Connell Electric, Dick Camping, to construct an addition with a 50 foot front property setback at 830 Phillips Road, Victor, NY 14564, whereas Schedule II, Area and Height Requirements for Light Industrial Districts require an 80 foot rear setback BE APPROVED:

FURTHER RESOLVED that the following conditions are imposed:

1. That the vegetation that currently exists along Phillips Road be left as it is and not removed.
2. Building permits are required for work including, but not limited to, erecting structures, placing signs, pools, fences, mechanical systems, etc. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Planning and Building Department.

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

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

Adopted: 4 Ayes, 1 Nay

#### NEW PUBLIC HEARINGS

909 FENWICK LANE

10-Z-2018

Fence Area Variance

The applicant is requesting to install several sections of privacy fence placed on raised flower beds. The proposed fence will have a total height of 7 feet 6 inches, whereas Section 211-41D(1) limits the height of fences in residential districts to six feet from grade.

Chairman Reinhardt – I'm assuming you haven't been here before?

Mr. Loomis – This is my first time.

Chairman Reinhardt – We've looked at the application. As you've heard there are some criteria that go along with the request for an area variance. Some of what you have in your application, which certainly helps. The first criterion is whether there is going to be a change in the

neighborhood. The second is whether you can achieve it by some other feasible means. The third is whether or not the requested variance is substantial. The fourth is whether or not there is going to be an adverse impact on the physical and environmental conditions of the neighborhood or district and fifth is whether or not it is self-created.

You will have an opportunity to speak and the Board may have some questions for you to try and figure out. We'll ask the public for their comments and then hopefully we will have a decision for you in short order.

Mr. Matthew Loomis addressed the Board.

Mr. Loomis – Perfect, thank you.

Chairman Reinhardt – If I understand you correctly from your application, you want to put up two fences, right?

Mr. Loomis – Yes, two raised flower beds with six by eight foot fence sections. I put some slides together that actually demonstrate better than the packet I created for everybody if you want me to walk through those.

Chairman Reinhardt – If you'd like to make the presentation, go ahead.

Mr. Loomis – I just want to make sure you understand my vision.

Chairman Reinhardt – I ask you, when you are going through this, we are creating a record, it will help the record because it is being recorded, try and refrain from using “this” and “that” and use compass directions. Use as many descriptive words as you can.

Mr. Loomis – I'll try my best. The picture you see on the screen here is the aerial shot that was provided by Debby and the Town. To give you a high level overview: the yellow arrows on the south side and north side of the property, essentially just behind the house on either side, is where we had five large arborvitaes when the previous owners were there. They were on both sides giving us great privacy from the neighbors and the neighbors had privacy from us. What happened was that this winter with the heavy snow pack, the deer mowed them down to the point where they were see through. I decided to take them down and grind the stumps down and then I was going to put up some privacy fence sections. Once I took them down and started doing some measuring, the way the house actually pitches, you could see that a with a standard six foot fence you could just be walking next to my deck and you would be looking right over at my neighbors on their deck and visa versa.

So what I'm proposing is essentially in the same spot as the arborvitaes were, is to put an 18 inch raised flower bed and then put three six by eight foot vinyl fence sections in each of those areas, running basically parallel to the house off the back here. On this picture which is

actually from my closing, it's just a different view than the aerial shot, of that same section on the north and south sides of where I'm looking to put these.

To give you a flavor of the type of fence, this is what I'm proposing: a standard six foot by eight foot vinyl fence that I will be installing myself. To give you context, it pitches away from the house and also it pitches east. It kind of goes down before I hit the big hill in my backyard. This is what I'm proposing it would look like on the raised flower bed. It would be the three fence sections in a row. As you can see on the far right of the slide, I'm actually going to stagger them a little bit because if anyone has been up on Fenwick Lane, it's incredible windy. A lot of my neighbors that have vinyl fences; I've seen them blown down so I'm trying to create a bit of space for the wind to cut in between there by staggering like that. The bottom picture is looking east from the road and you can see that they are very closely in line with each other.

I took some pictures. This is the north side of the property, to the left of our house. On the left you may be able see the ground up area where the original arborvitaes were. On the right I've superimposed where I'm going to put the raised flower bed and what it would like from the front looking eastward.

This is looking at that same east side off of my back deck, looking directly north into my neighbor's house. This what I'm envisioning this is going to look like when I hopefully get approved and finish the installation.

This is the south side of the property, a very similar view to the front. Now this is on the right side, looking straight back right along our property line. It's where I'm proposing to put the second raised flower bed and fence sections.

This is looking directly south off our deck at our neighbor right next door to us, what I envision it would look like with the fence sections, giving us some more privacy.

Just to give you an idea of what we are going to plant in there. It's probably going to be mostly Hostas and Bloodleaf. My wife is deathly allergic to anything that stings so we try to minimize flowers that attract bees. We've gotten pretty good with these two plants around the rest of our house. We'd be looking to circle both flower beds with something like that.

Chairman Reinhardt – You also have two neighbors, or four neighbors: Tara and Dan Graziadei, they are for it and Steve and Jessi Metzger are for it.

Mr. Loomis – Correct, they are my direct next door neighbors.

Chairman Reinhardt opened up the meeting for questions from the Board members.

Mr. Salsburg – I think the application is pretty well done. It seems like the area is so big that the elevation request is not very substantial and it's replacing an existing visual barrier that was there before. The biggest thing is that the deer won't eat these. As long as the neighbors are good with this, I have no questions.

Mr. Harter – Are you placing the fences right at the property line or six feet from the property line?

Mr. Loomis – They are just inside the property line.

Mr. Harter – What does just inside mean?

Mr. Loomis – I couldn't tell you exactly how far off the house they are. It's in the easement so I'm going to be coming next Monday to get the approval to put them in the easement. On the south side of the house I would put the initial first fence post 20 feet six inches off the house and then on the north side, which is the Metzger side, it would be 18 feet from the back corner of my house.

Mr. Harter – What is the setback that needs to be obeyed?

Mr. Benedict – Minus the fact of the easement, it's one inch. The fence can be up to one inch from the lot line.

Mr. Harter – What does the easement say? Does the easement language speak to a fence not being allowed?

Mr. Loomis – The utility easement, I have to agree to allow the Town to tear the fence out without holding anybody liable. What my intent is, the way I'm actually going to install these, is that I'm only going to install the wooden underlayment posts in concrete. If they do have to be torn out I can just take two bolts out and slide the vinyl off.

Mr. Harter – So the water main easement speaks to being able to service the water main?

Mr. Loomis – Correct.

Mr. Harter – And the setback is basically a zero setback?

Mr. Benedict – Essentially, yes.

Mr. Harter – Those are my questions, thank you.

Mr. Nearpass – I agree, I think it was a very good presentation not everyone comes this prepared. It's good to have all the information. I have a similar concern with the easement. It's a bit of a chicken and egg situation. I'm only speaking for myself but I'm never really in favor of having

anything going in those easements. It's a bit of a slippery slope. The easements are there for a reason. I've got to figure out how to understand that a little better.

Why not just replace it with more arborvitaes? I know there are deer. We all have deer, but why not just put more arborvitaes there.

Mr. Loomis – They attract wasps, probably first and foremost, and my wife just came down about 18 months ago with being allergic to anything that stings. They were not her favorite last year and then when the deer gnawed them down I thought, OK, I can cut them down now and try to replace them. It's a great question. They were, just to give you some context, five feet wide and probably 12-14 feet tall. They were immense. Trying to buy arborvitaes even half that size would probably double my project cost and I would have the same deer problem.

Mr. Nearpass – To me, in terms of whether it would be in the character of the neighborhood, I'm not quite sure how it really fits in. Before where it was more of a landscaping type of buffer it kind of blends in. In this case you're kind of putting a fence in. By definition it's a fence but it's really just three unattached panels on each side that makes it 100% obvious that you don't want to see what's on the other side. I'm not quite sure how that fits in. I know both of your neighbors are in favor it and that helps. It seems like it's not as elegant a way as you had it before even though I know the other way takes a little longer to grow. I'm not quite sure I've warmed up to this yet. The easement is definitely a challenge, can you elaborate on that more?

Mr. Loomis – On the north side the fence panels are going to be closer to our house to keep it more on the edge of the easement. I spoke with a gentleman from the water authority who was there doing the markings. He seemed to be better with it being a little farther away from our property line or within an inch of our property line. I'm willing to take the risk. If somebody needs to take them out, at this point it's not a huge concern for me. Access in and around there; you can still get an excavator back there by any means.

Just to touch back on your comments regarding esthetics and appearance; our house is white and then our back deck is all trimmed with white but Trex grey decking. My neighbor to the north who has a lighter tan, the Metzgers, they have a nice white vinyl picket fence on their property line which would run parallel to this. I think it would complement each other, It's the same thing on the Graziadei's house; their house one the south side is all trimmed in white. That's one of the reasons I went with the vinyl. If I went with something else I would have to stain it and it's harder to maintain, but also then trying to match it would be difficult and to keep it esthetically pleasing across the neighborhood. There is a lot of white trim in the neighborhood, that's what most of the neighbors have.

Mr. Nearpass – Al, there are two variances, right? One is they are asking to be in the easement?

Mr. Benedict – No, the variance is just for the height. The way the Code reads is that you can't put a fence in an easement where it says you cannot do that. We've talked about this in the department and determined that if the Town Board provides a Hold Harmless agreement to a resident, then essentially that is giving them permission to put a fence in the easement.

Mr. Nearpass – What do you believe needs to come first? Would you issue a permit before you had the Hold Harmless agreement?

Mr. Benedict – No.

Mr. Nearpass – On the foot and a half topic, which is the other main one. You really think it would make that much of a difference? Your neighbor's fence looks like it's probably a four feet tall, see through type. I'm sure if you were up on your deck you could see over it. It's probably everybody's challenge when you have a deck that marries up to the back yard. What is unique about this?

Mr. Loomis – How I came up with the number is if I can sit on our deck and have a dinner and not be looking at the neighbors eating was my context. Sure, if I stand up I'm going to see over it but my thought was if we can at least sit on our side and have dinner and they could sit on their deck and have dinner and we're not looking at each other directly. It gives us more privacy. The way the yard pitches in between, that's why I came up with the 18 inches to just give it enough height so that when we are sitting down we can have some privacy.

Ms. Morley – My comment was should we let the Town make the judgement before we made a decision. I'm not a fan of putting anything in the easement.

Chairman Reinhardt – I think you want to put this in a swale. A lot of the developments have swales on the sides of the houses. From the pictures I see one in the back of your house. That's to keep water draining away from your house, draining away from your neighbor's house. There is some drainage system that allows water to get away from houses. Older neighborhoods don't have that and older neighborhoods have water problems in the basement. You putting, I don't care if it's one section, three sections, or ten sections. You are putting it is a swale and potentially blocking the waterway.

I don't know the nature of the beast of the easement that you are talking about so I would also be concerned that without knowing what that easement is exactly, has me flying in the fog.

On the swale issue, Al do you have any thoughts on that? It looks like it's a swale and it looks like it's a drainage swale.

Mr. Benedict – One side is the water main and the other side is the sanitary and storm sewer. I think there may have been an inlet in the back of the yard. The backyard, at least according to the

proposed plans, slopes back towards the house and the water would go to one side of the house or the other and some of it would go to the catch basin. Generally we've thought of fences, if you at least leave some space underneath them it still allows the water to flow through. It's acceptable. The problem here is putting a bed of flowers or whatever, shrubs and whatnot. We've seen at times it blocks the water from going where it's supposed to go.

Chairman Reinhardt – I think that by raising the bed, I think potentially you could be inhibiting or challenging what the swale is supposed to be doing. That's one concern I have. The other is, it's not a traditional fence in the sense that you are either trying to keep something in or keep something out. It's more visual and you are transparent enough to say that when you are having dinner you'd like not to see what is going on next door and visa versa. Are there other ways in which you can get some privacy? There are awnings, even a six foot fence that is closer to the deck, you could still accomplish the same thing. By pushing it farther, I think geometry is going to tell us that you are going to be able to see over the top of that unless you were standing right next to the fence trying to look over it. OK, I'm 6'3", I can almost see over it, but most people can't see over a six foot fence. Gaining another foot and a half is going to help you much. I have some concerns on what you are trying to accomplish and what is actually happening here is not quite meshing with the need for the variance.

Any other questions from the Board before we continue?

Mr. Harter – You are really here because the fence is greater than six feet. That's the reason you're here.

Mr. Loomis – Correct.

Mr. Harter – We also noticed that you want to put the fence sections in the easements. I agree, one of the easements, the utilities easement, as the survey map shows is a utility easement to the Town of Victor but the water main, if my memory serves me right, originated with the Town, but didn't the Town convert all the water mains over to the Monroe County Water Authority? Wouldn't they be the entity servicing the water main in that location?

Mr. Benedict – Actually I wrote that question down for myself to research tomorrow.

Mr. Harter – I deal with the Monroe County Water Authority on a regular basis and they are not perhaps as friendly about providing Hold Harmless agreements. You might want to check with them just for a general perspective, a phone call. I think that's probably not something they would go for, which poses another questions in my mind, which is can you just move it over ten feet from the property line?

Mr. Loomis – I could but my backyard is really going to shrink. It will go from having a 100 foot width property; I'm going to lose 20 feet. I would probably have to rethink the whole project to move it inside because it would kind of be in the middle of the backyard where the kids play.

I spoke to the gentleman at the Water Authority and he made it seem like, through our verbal discussion, that if I'm willing to sign off that I won't hold anyone accountable, that where I intended to place these, they will be OK with it.

Chairman Reinhardt – That's not going to help us. I know you haven't been here before, but we need something in writing that says whatever entity that you are working with, that you are both on the same page with it because should anything go sideways with this, you will come back before us and you're going to say "she said this" and "he said that". It makes for a very difficult variance. Do you think you could get that piece in writing that you have permission to go into that area?

Mr. Loomis – I can clarify that but I thought the Hold Harmless agreement was going to cover me for that.

Chairman Reinhardt – Let's chat about that a minute. What the Town does with the Hold Harmless agreement doesn't necessarily dictate what the Zoning Board is going to do. They are separate entities. The Town Board is the legislative body of the government. This is a quasi-judicial branch of the government. We're hearing your request for a variance. You are looking for an exception to the Code. It helps if we see that the Town is willing to give you a Hold Harmless agreement, but it's not the end all, be all, you get the variance. Follow me?

Mr. Loomis – Completely. I knew I needed both of those to get the approval to even entertain the project.

Chairman Reinhardt – I think it would absolutely help your cause if you have that. While I am thinking about it, how do we figure out if the fence in the swale is going to cause any drainage problems?

Mr. Benedict – I could probably go out and review the site, or somebody else could, to see where he is proposing it.

Chairman Reinhardt – I think I would like to see that. If it is going in the swale and you are going to raise the bed. It's one thing if you put a couple of posts in there and like Al has said, if the water can go underneath it, but you are talking about blocking it. We don't know how wide the bed is going to be. I think you have some diagrams, but I think it's going to help if Al goes out and gives his opinion on what if any impact putting a raised bed in there would do to water drainage and the purpose of the swale.

Mr. Nearpass – What is in the utility easement? Is it a culvert or just a swale?

Mr. Benedict – It's a swale and there is public sanitary and a storm sewer.

Mr. Nearpass – I think you said you were going to be within a foot of the property line but the property line looks like it goes right through the middle of the easement which to me is probably exactly where all the utilities are.

Mr. Loomis – When they came out to mark everything, there were no issues on the utilities, which is the south side of the road. There is a drain on the outside of the property between the Graziadei's and ours to the southside of the playground. That's getting everything flowing north. Then our property everything is pitching north towards the pond on Lane. If you are not familiar with this, this hill, when you are standing on top of it, is taller than my house, right here in the back. So this water drains right here and this runs right through the Metzger's yard and up around, and there is a grade. If it doesn't make the grade it keeps going and there is the pond up on Lane. So everything is flowing north. We just happen to be at the top end since the one grade or shared piece is right here.

Mr. Nearpass – But you are going to pour concrete, so you have to get below the frost line. So you are not just going to put two sticks in the ground.

Mr. Harter – Could I make a comment on the Hold Harmless agreement. Even if the Town Board were to give you the Hold Harmless agreement, I'm not sure that is binding on the Monroe County Water Authority. I think what would be binding on the Monroe County Water Authority is if they replied back to us and said they had no problem with your application. I think any easement written for utility or water main generally states as part of their boiler plate that if they remove something they are required to restore it in kind, which is why they don't like these objects in their way. They really don't feel like putting fences and concrete back together again. Sure they have to rip up a water main under a water main break scenario or whatever utility may be failing; and they all fail eventually. That's the purpose of the questions.

Chairman Reinhardt – What is your understanding of the Hold Harmless Agreement?

Mr. Loomis – I'm waiving my rights to hold anyone accountable that has to get to the utilities who can yank out the fence and tear up the yard.

Chairman Reinhardt – Do you understand that it could also mean if the Town gets sued because your neighbor claims you were granted a variance that you are going to defend the County and you are going to indemnify the Town?

Mr. Loomis – My neighbors have already written their approval for the proposed variance.

Chairman Reinhardt – I'm cautioning you to take a close look at what a Hold Harmless agreement is. If you have any questions about what that means, what it is, go seek legal counsel and have your attorney explain it to you.

Ms. Morley – They might not be there forever, your neighbors. Your new neighbors may not be in favor.

Chairman Reinhardt – This Board cannot give you legal advice. I'm giving you fair warning that it's a legal document. Take a careful look at it, if you don't understand it, ask counsel what it means.

Mr. Harter – We had a similar application once upon a time for an animal fence in a drainage easement. We went around and around about that. The Hold Harmless agreement is something that can be granted by the Town Board, yes, I agree with that, but I think our discussion went along the lines of easements are a matter of public record. They are filed at the County Clerk's Office along with a plat map and other documentation relative to the property. I'm not aware that a Hold Harmless agreement is filed at the County Clerk's Office. So homeowner X, after you sell and go away, they may not be privy to this Hold Harmless Agreement and may assume that they are not responsible for replacing this fence that they bought along with their property. It's not a matter of public record.

Mr. Nearpass – Would they be or would he still be? They haven't signed the Hold Harmless Agreement.

Chairman Reinhardt – I think you are getting in to a legal rabbit hole, if you will. The important piece is that everyone that signs a Hold Harmless agreement needs to understand what the legal ramifications are for them. Everyone is going to have their own point of view of what it means to them. The Town has their own attorney that will chime in on it. This is what it means to the Town and fill in the blanks for the Town and the same thing for the Zoning Board, but they are not going to give you legal advice. You have to do that on your own.

Mr. Loomis – Thank you.

Chairman Reinhardt – Any other questions from the Board; from the public? (No one had any other questions).

What does the Board feel on the importance of having Al take a look at whether or not the proposed variance and the raised flower beds would impede the swales on the side of the house? Basically, press on with the variance today, or Al, we need some more information.

Ms. Morley – We need more information.

Mr. Nearpass – Yes, I think we need more information.

Mr. Harter – I think that information wouldn't hurt.

Mr. Salsburg – That's a good idea to find out how wide the swale is, etc.

Chairman Reinhardt – I think so too. The other piece is having whatever agreement you have with Monroe County Water Authority, present that to us. It would also help if you have something in writing from the Town Board that you would get a Hold Harmless agreement if this variance is granted. Everyone agree with that? Any other homework for our applicant?

All Board members were in agreement; there was nothing else.

Chairman Reinhardt – Is July 2<sup>nd</sup> enough time or do you need some more time.

Mr. Loomis – Absolutely, that's enough time.

Chairman Reinhardt – We will you see you then on the 2<sup>nd</sup>.

Mr. Nearpass – That's enough time to get in front of the Town and get back here with the Hold Harmless agreement?

Ms. Trillaud – He's going in front of the Town on Monday.

Chairman Reinhardt – If you need more time than that, just say you need more time and we will get you on the next meeting. I'm not trying to put your feet in the fire.

Thanks were give all around.

#### TABLED PUBLIC HEARING

SONG HILL WINERY 521 County Road 9

8-Z-2018

(Carried over from the 5/21/2018 & 6/4/2018 meetings)

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 – Last time we spoke, we were waiting for the County Planning Board to give us their thoughts on the matter. The County considers this a Class 2 and recommended approval with comments. Did you have a chance to look at that?

Mr. Gallagher – I haven't gotten that.

Chairman Reinhardt – OK, we'll read it into the record. The County's comments are: In 2013 the property was given a Use Variance for development of a winery in a residential district with conditions restricting public access for retail sales, wine tours, or wine tastings. In 2017 the property was added to Ontario County Agricultural District 1. This applicant is seeking an amendment to the Use Variance to allow direct marketing of farm products. The owner anticipates meeting the Ag & Markets standards that products marketed on the farm will contain 51% farm grown ingredients and the size and scope of public events will be in keeping with the size and scope of farm operations. The owner anticipates building a tasting room for approximately 12 people that would operate four or five days per week during daylight hours and hosting three to four festivals attracting 100 or fewer people over a four hour daylight period. Any sales of outside products such as local cheese would be limited to 30% of gross sales activity. According to OnCor there are several wetlands along the north property boundary.

Is that accurate? Why don't you take a look at it before we continue?

Mr. Gallagher – What am I looking at exactly? The only thing I was really hesitating at was the wetlands. I don't about that either way. I'm not disputing it. If you ask me if that is correct, I can't verify it.

Chairman Reinhardt – I think what the County Planning Board is trying to tell you is leave the wetlands alone. Whatever you are doing over there, it's your property but it doesn't mean you can do whatever you want to it. There are restrictions and rules for wetlands, they are in the Code. Other than that, as far as the operation goes what the County Planning Board is saying is that it anticipates that you are going to be doing certain things. Does that sound right to you, is that what you are going to do?

Mr. Gallagher – Those are all in line with what the Ag & Markets law allows. That's what I was trying to show in my application to this Board with the proposed amendment that everything that we would be proposing to do would be in line with the guidelines laid out by the Department of Ag & Markets. That's that 51% comes from our own fruit. Any outside vendors at these events, which I anticipate very few, would be limited to 30% of the total sales. Those types of facts, yes that is accurate.

Chairman Reinhardt – What the Zoning Board has authority to do at this stage is either modify the use variance or just completely toss it out. We've talked about that at the last meeting a little

bit. Now that we have the comments back from the County Planning Board I think this is a good opportunity to poll the Board and see what they have to say about whether or not they're in line with modifying the variance or tossing the whole thing out.

Ms. Morley – On your proposal you said you wanted to do three or four festivals attracting 100 or fewer people. How are you going to guarantee that, how did you come up with that number? When I go to festivals like that there are more than 100 people.

Mr. Gallagher – It's strictly from a staffing and size and scope of our operation. There was one thing that I had talked to the Town Board about when we had a couple of meetings regarding putting us into the agricultural district, because I didn't make any secret why we wanted to be there. One of the things that I had said was that I wanted to keep.... We had festivals on the farm before. I don't know what the numbers were. It was my grandparents who ran them, but they did have festivals that were open to the public prior to the use variance. One of the things that the Town had told my grandmother at the time was that they would consider it under the umbrella of garage sales. So, no more than two consecutive days; no more than four times a year; whatever that guideline is. I had told the Town Board that I had wanted to keep under that umbrella with anything that we would do. I think that is also in line with the size and scope of our operation. We're a small operation. I have very limited staffing in order to do these types of things. I'll probably have to hire some staff. That's where I come up with that ball park number based on what we are producing and what I think I can handle from a staffing standpoint.

I want to limit the time of these things. I think people envision the Naples festival where there are several vendors. That's not really what these events are. I think that doing something like that would violate Ag & Markets law because it's not within the size and scope of our operation. We're a small private operation; like a boutique winery. Important to our brand is having intimate customer interactions; explaining to them our process; explaining how we do things and being able to show them our equipment to make small batch wines. If we get bigger and have more people I won't be able to have that. That's how I got those ball park figures.

Mr. Nearpass – I say we get rid of the variance. I want to get completely rid of it. I think it's a moot point.

Mr. Harter – I think we should keep the variance but modify it per our closed session discussion last time.

Chairman Reinhardt – Fred, thoughts on modifying it or rescinding the use variance?

Mr. Salsburg – I'm kind of in favor of rescinding the variance. It's the County and State that have interfered and if we step right out of it there is one less governing body trying to govern.

Mr. Nearpass – Because it's a farm, I think our ability to restrict is much less than we talk it up to be. It's a farm. It's a designated agricultural area. It's not a quasi-farm, it's a farm. We talk in the Town Code about Section 108-1 "The Town Board of Victor finds that farming is an essential activity within Victor. Farming, as defined in the Right-To-Farm Law, reinforces the special quality of the life enjoyed by citizens, provides the visual... and economic... benefit...". The second we get it, let's regulate, let's further restrict it.

Chairman Reinhardt – That’s not what happened here.

Mr. Nearpass – No, but we have the opportunity to say, we might want to keep this piece of paper in case we want to further restrict it or try to regulate it. My point is that I think they are regulated enough. I think it’s a farm, it’s designated as a farm; they came in front of the Town Board; they went in front of the County, the State. I agree 100% with what Fred said. It’s one other thing that we should just get out of the way because there are plenty of folks that want to regulate.

Chairman Reinhardt – In a hypothetical then, if he fails to produce 51% of farm grown ingredients.... What if it’s 49%?

Mr. Nearpass – He loses his Ag district certification. It’s up to the State and County to monitor that.

Mr. Gallagher – In the guidelines that I provided as part of my materials, way back in May when I first provided these; the Department of Ag & Markets says that farms are required to do this type of record keeping and the municipalities do have the right; I would say it would fall on Al or somebody in a similar position with the Town, to say, hey, wait a minute, we want to see your records. We want to see that you have 51% fruit, that kind of thing.

Chairman Reinhardt – Al, what happens?

Mr. Benedict – That is an accurate statement, what he said.

Chairman Reinhardt – If he fails to comply with the Ag & Markets standards, and whatever he is growing there at the farm is less than 51%, on just that hypothetical, who is the enforcement? Is it the County, is it the State?

Mr. Benedict – First I would have to have a reason to believe he is not following the regulations. At that point I would start asking questions of now what happens because I don’t know. I don’t know if there is a process whereby you remove the Ag designation. I don’t know what that looks like or if it is even possible. It would need some research.

Mr. Gallagher – So I found it, it’s in one of the documents I provided with my materials. “Guidelines for review of local laws affecting farm operations which produce, prepare, and market crops for wine, beer, cider, and distilled spirits. On the second page there is a thing in bold that says, “Farm operations must keep sufficient records to prove that this requirement is met”. That refers to the 30% of total gross sales from retail on site coming from outside of the farm and 51% of on farm produced grain, hops, grapes, fruit juice, etc. And it said, “Further local governments can require the farm to submit an annual report to the locality showing that these conditions have been met”.

So it’s right in the Guidelines that someone like Al could say he needed to see those documents.

Mr. Harter – But that’s a guideline, right? In other words it’s to guide. It’s not a law, is it a law?

Mr. Gallagher – I guess it means that at any time Al could say hey, I want to see your records on this. Meaning that that is an area where localities have a right to supervise farm operations.

Chairman Reinhardt – So Matt, if I understand you right, you’d like to rescind and revoke this variance and therefore there can be no conditions.

Mr. Nearpass – Correct, in my opinion that is what I would like to do.

Ms. Morley – I would like to do the same thing as Matt.

Mr. Harter – I would still like to, per our discussion in closed session last time, modify.

Chairman Reinhardt – So you’d like to see a modification with conditions attached to it. Really the conditions are going to be mirrored to the comments from the County Planning Board. That he has to comply with Ontario County Agricultural District #1.

Mr. Nearpass – He’s got to do that anyway, right? Are we going to add conditions that just say you have to comply with another law?

Mr. Harter – So we have a memo that was a circulated by us at the last meeting that we reviewed. There were two suggested changes presented to us as suggested by the attorney and I think that those are worth applying and modifying the existing use variance. I would take that recommendation from the Town Attorney.

Chairman Reinhardt – The other part that they were looking at is having the Planning Board monitor the tastings, the retail, the hours of operation. You’d like that in the conditions as well for the use variance modification.

Mr. Harter – I can appreciate the fact that it is easier and cleaner to rescind the use variance, but I have to admit that the neighbor who came had some interesting input. I think as I see my role on this Board, I would like to protect people like that and offer some sort of process by which if something is going awry, that there is something in place such as the suggested language here...is it OK if I read the language that was presented to us and as suggested ...

The conditions or suggestions are – That the words “non-public wine production facility” be replaced with “farm winery”. That conditions #3 and #4 be replaced by a single condition as follows, “Any direct farm marketing activity will be reviewed by the Town Code Enforcement Officer for compliance with the conditions in the guidelines of the New York State Department of Agriculture and Markets”; which I think then takes the guidelines that were cited and locks them into some means of evaluation and enforcement. That’s what I see here.

Mr. Salsburg – When I had a Christmas Tree farm for 35 years, every year I had to fill out some forms for the New York State Ag & Markets. Then, every so often, one from the County. They wanted to know this type of thing: Where did I get my materials and was I paying taxes and so forth. The Town never showed up. So whatever the Town does, I imagine the State and County

are still going to continue doing, which I think is monitoring, the same thing we're talking about here.

Chairman Reinhardt – So what I'm asking you here, the use variance that is presently in place, either needs to be revoked without conditions or modified with the conditions that have been suggested.

Mr. Salsburg – I'm still for revoking.

Chairman Reinhardt – I'm with Scott for modifying the use variance with the conditions.

Mr. Gallagher – What you had read, Scott, was exactly what I had proposed as an amendment. Those were the exact words that I had proposed. Having read Al's response to it... I had proposed that after discussions with Al as well as Kim Kinsella and Sean McAdoo. I had proposed the amendment but then I read Al's response to my proposal and I thought that might make more sense. I guess that's my question, why Al's response doesn't make more sense because a lot of the burden would fall on him anyway, why wouldn't his response carry more weight than what my suggestion was for the amendment? Not that I have an issue with the amendment, obviously, I offered it up but having read Al's suggestion, I thought it was a very compelling letter.

Chairman Reinhardt – The Zoning Board consist of these Board members. Al is the Code Enforcement Officer so he offers his thoughts and opinions. Sometimes we take them, sometimes we don't, just like someone from the public. It's a collection of facts that we are trying to get so hopefully when the day is done we get it right.

Mr. Gallagher – I guess I'm just asking why. Why Scott wasn't convinced by Al's suggestion that we rescind it. I'm just curious as to why.

Mr. Harter – Let me answer the question. I'm more influenced by the individual that came and spoke, your neighbor and his reasons for speaking. I'm also more influenced by the attorney's recommendation regarding modification. I take it all into consideration. I saw what Al said. I think if everything is running smoothly then there are no issues, right?

Mr. Salsburg – You saw where the neighbor did soften his stance a little bit?

Mr. Harter – Yes.

Mr. Gallagher – The other thing too, I do know because I had pulled it when I came before the Board a couple of years ago, that in his certificate of occupancy it does say that his property borders a farm. He did know when he purchased the property it was right next to a farm. I think there weren't horses there at the time he purchased his property but there are horse paddocks all around it and horse barns. It's not entirely fair to say that he didn't know that farm operations would be going on right next to his property.

Mr. Salsburg – And did he not get a variance to get a little closer?

Mr. Gallagher – I don't know, that might predate me.

Mr. Salsburg – I think he said that.

Mr. Nearpass – I was going to ask either Scott or Mike, with what we just read, if that homeowner were here, what additional processes or restrictions would he want imposed on the farm? All it's saying is that you are going to follow the New York State agricultural rules and regulations and you're going to go to the Planning Board like you are supposed to, that's going to regulate your hours of operation from the retail side of it. Al will do his job normally if someone directed him to go out there and look at the data. Like Fred was saying from the County side.

We had this discussion in open session where it really didn't say anything. It was just another document that said you were going to follow the law.

Chairman Reinhardt – To answer your questions, this parcel, this project you are working on, is a new animal. It hasn't been there for years and years and years. Historically, it's something brand new. You did some homework and you did some pushing and what once something that you needed a use variance, because of your homework, it no longer needs a use variance. In other words if you were to come here today with that same application, you wouldn't need it for what your proposed use is going to be.

Mr. Gallagher – Right.

Chairman Reinhardt – What I think is happening, or has happened, is because you started creating a new animal and now it is classified with these new rules and you can do a lot of these things that you couldn't do before, in my mind because of what's happened, having a modification of the use variance puts another layer of security, if you will, on keeping you doing what you said you're going to be doing for that parcel, because it is a new piece. That is my opinion. You have three other people that just say toss the whole thing out and revoke it, like it never happened. I have some concern about having something that never happened. All the record, all the minutes, everything that we've done; there is still a public record but it really is of no use or purpose for what it is you're doing on that property. It's meaningless. That's my thought on it.

Mr. Harter – I kind of look at it that way and I also agree with Fred looking at it from trying, wanting to make it non-complicated or simpler. When you recite the word "guidelines", I've heard the word guidelines a lot in this business and a guideline is a guideline which means that you should be doing this or should be doing that, but maybe you're not doing this or not doing that. It seems to me that by putting that into a modification to the variance previously granted and designating Al as the enforcement person for compliance with that. That seems to add more strength to a guideline than just reciting a guideline. At least there is someone who is identified as being able to look at that and enforce the guidelines. Maybe I'm making too much out of this. Maybe a guideline is a law and I just don't understand it.

Mr. Gallagher – In response to that I would say that the purpose of the guidelines, when you look at them, are to direct Town's on how they can regulate farms. In theory Ag & Markets law sits superior to everything with certain exceptions where there are ways in which Towns can regulate. Otherwise Ag & Markets could say to a Town, hey, that's overly restrictive. So the point of the guidelines is to tell Towns these are things that we don't find overly restrictive and these are things that we do find overly restrictive. That's the point of the guidelines. The guidelines would direct you to what you can and can't do. That's basically why I said in my amendment that just changing the use variance to say that the property will comply with Ag & Markets guidelines. I think I have to anyway. I think that's the point that Mr. Nearpass is saying that it's redundant. I don't think either way you go it changes anything for me if that helps anyone make anything easier.

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

Chairman Reinhardt – So what we have before the Board is a resolution for revoking and rescinding the use variance without any conditions. It's a complete rescindment, revocation of the use variance that was granted in 2013.

We already talked about the County Planning Board putting comments in.

RESOLUTION:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on May 7, 2018 requesting an amendment to a use variance approved on May 6, 2013 which allowed a non-public wine production facility in a vacant building located at 6717 Song Hill Lane (521 County Road 9); and,

WHEREAS, said application was referred by Alan Benedict, Code Enforcement Officer of the Town of Victor on the basis that the applicant is requesting to allow tastings and festivals as the property is now in the County Agricultural district; and,

WHEREAS, on July 5, 2017, after review and recommendation by the Ontario County Agricultural Committee, the Victor Planning and Building Department, and the Victor Town Board, the Ontario County Legislature modified Ontario County Agricultural District No. 1 to include Song Hill Farm; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on May 12, 2018 and whereby all property owners within 500 feet of the application were notified by U. S. Mail; and,

WHEREAS, Public Hearings were held on May 21, 2018, June 4, 2018, and June 18, 2018 at which time one resident wanted to know more about what was going to take place at the winery and one resident spoke against allowing farm marketing operations; and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act per Section 617.5(c)(3) and therefore does not require further action; and,

WHEREAS, the Ontario County Planning Board assigned the referral as a Class 2, referral no. 80-2018, and returned it to the local board on June 13, 2018 with a recommendation for approval; 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:

- New York State Town Law, Article 16: Section 283-A. Coordination with agricultural districts program, states “Local governments shall exercise their powers to enact local laws, ordinances, rules or regulations that apply to farm operations in an agricultural district in a manner which does not unreasonably restrict or regulate farm operations in contravention of article 25-AA of the New York Agriculture and Markets Law, unless it can be shown that the public health or safety is threatened”.
- Further, the New York State Department of Agriculture and Markets Guidelines for Review of Local Laws affecting Direct Farm Marketing Activities states “Direct farm marketing should be allowed in all areas within a county-adopted, State certified agricultural district”.
- It follows that because Song Hill Farm is now part of the Ontario County Agriculture District #1 the original approved use variance is now more restrictive than what the applicant is allowed as a farm operation within an Agricultural District.

On a motion made by Mathew Nearpass, and seconded by Fred Salsburg:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application of Conor S. Gallagher, 40 Main Street, Phelps, New York for an amendment to the May 6, 2013 approved use variance to the Town of Victor Zoning Code located at 6717 Song Hill Lane (521 County Road 9) named Song Hill Winery, is to be replaced by a RESCINDMENT of the original use variance and that the use variance of May 6, 2013 regarding 6717 Song Hill Lane BE REVOKED.

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

Michael Reinhardt	Nay
Mathew Nearpass	Aye

Scott Harter	Nay
Donna Morley	Aye
Fred Salsburg	Aye

Adopted: 3 Ayes, 2 Nays

Mr. Gallagher – I just want to thank you; I’ve been here a lot. I’ve taken a lot of your time. I appreciate the care and concern that you have gone through and looked at this, I really do. I just wanted to say that I appreciated your time a lot, so thank you.

Chairman Reinhardt – You’re very welcome and thanks for saying that. I appreciate that.

Mr. Gallagher – Thanks a lot to Al also, he’s been a great resource. I appreciate it.

Chairman Reinhardt – Very good, good luck to you.

On a motion from Scott Harter, seconded by Donna Morley, it was unanimously agreed and RESOLVED, that the meeting was adjourned at 8:24 PM.

Debby Trillaud, Secretary