

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

OTHERS: Al Benedict, Town of Victor Code Enforcement Officer; Ed Kahovec, Town Board Liaison; Chadi Sarkis; Troy Bamann; Carmine Torchia; Gary Perkins; Donna Clements; 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 Scott Harter, seconded by Donna Morley,

RESOLVED that the minutes of August 6, 2018, be approved as submitted:

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

Approved: 5 Ayes, 0 Nays

Chairman Reinhardt – We have public hearings for variances. Just as an overview for everybody, what we will be looking at for area variances are five basic criteria. One being whether or not there will be an undesirable change produced in the character of the neighborhood. The second one is whether or not there is a feasible alternative. The third is whether or not the variance requested is substantial. Fourth is whether or not it's going to have an adverse impact on the physical environmental conditions and fifth is whether the difficulty is self-created.

We have the applications and once we hear what you have to say and anything that you want to add, the Board will then ask you some questions and the questions will be geared to those five criteria. Once we ask some questions we will ask for questions from the public. Hopefully we can move and if there is enough information the Board will make a decision; either granting or denying the variance. Certainly if there are any questions during your application, by all means ask. We are here as public servants and we will try to help you the best we can. In that vein, we can't make this up. We are asking questions to find facts so that we can base our decision on facts, not speculations or guesses. Sometimes applicants will find that our questions are a little bit probing but we are doing our very best to find facts so that we can make a good decision.

The secretary read the legal notice that was published in the Daily Messenger on August 26, 2018.

PUBLIC HEARINGS

1. BAMANN SHED 14-Z-18
1255 Heather Lane

The applicant, Troy Bamann, is requesting two variances for an existing shed at 1255 Heather Lane to allow a setback that is less than the required 15 feet, whereas §211-20C states accessory structures must observe a 15 foot property line setback. Also, the shed is forward of the front line of the house, whereas §211-31G(2) states no accessory structure shall be forward of the primary building.

Mr. Troy Bamann addressed the Board.

Chairman Reinhardt – We have your application. Certainly if you have any questions, ask us. In a nutshell, you need two variances. One for the front setback and then one for the side. Because you need two variances, and this happens from time to time, we separate them. The criteria is the same but there might be different types of questions on what and how and determinations. Asking for a variance is certainly a serious thing. What we have here is that you believe the shed was placed on your property but you were basing it on a tree line?

Mr. Bamann – Correct, there is a tree line and we were told when we bought the house five years ago that was the line.

Mr. Reinhardt – I understand the predicament, but it's the old adage, ignorance of the law is no excuse. So just because you thought it to be something doesn't automatically make it OK. We have to go by the Code and go through the criteria. What I'd like to do first is take a look at the variance requested for the front setback.

You are on a corner lot, so that is a bit of a problem as to where is the front of the house. The shed needs to be behind the front of the house. Anything else you want to add or comment on for the variance that is requested for the front of the house?

Mr. Bamann – You really can't put a shed anywhere around that front yard. On the other side, talking about why I had to put it in the front, is because it's really the only place to put it. On the other side of the neighborhood there is a neighbor's fence and there is also a playground on that side. Then there is a tree line in front of that so you really can't place it, you know, going all the way around you really can't place a shed anywhere because there is another tree line if you look all the way around.

Chairman Reinhardt – Why can't you put it farther north, into the backyard?

Mr. Bamann – Which way, farther north on there, because there is a kid's playground there, on the left. All the way to the left is my kid's playground. So you can't put it there. If you are looking to the left. I have pictures here.

Mr. Bamann brought up the picture. It was not depicted on the aerial image.

Mr. Bamann – Also in the middle there are a lot of trees so unless I put it in the middle of my front yard there are trees that go in the back of that along that same line; so you really can't put it there as well. Literally, the only logical spot to put it was in that back corner where there was nothing.

Chairman Reinhardt – Anything else you want to add for the front setback request?

Mr. Bamann – The only other thing is that I had two neighbors comment, write letters as well. Both of those neighbors that face the shed say it is aesthetically pleasing. You can't see the shed because of other trees. Again, all my neighbors have said that it is not a bother to them.

Chairman Reinhardt – It seems we have five letters from your neighbors.

Mr. Bamann – Yes, all within that area.

Chairman Reinhardt – I think they would apply to both the front and side setback requests so we will take them for both variances.

Ms. Morley – Can you tell me where your leach line placement is?

Mr. Bamann – Yes, that's in the front yard.

Mr. Bamann used a pointer to show on the image where the leach lines were located.

Chairman Reinhardt – What is happening is that we are recording this for the record. It's difficult understanding this and that and there. If you would circle where the approximate location of the leach field is on the survey map, put your initials next to it. We will mark this as exhibit A and will keep it for the record.

Mr. Harter – It's on the west side of the house between the house and the road?

Mr. Bamann – Yes. Another thing too. It does drain in the backyard. The water comes from in the middle of our backyard into the next neighbor's yard. So you really can't put...it literally drains right in the middle of the yard. That's another reason.

Mr. Nearpass – I understand, it's obvious there is confusion about where the front of the house is. We've seen a couple of these before. I'm assuming the front of the house per the Code is the south facing side.

Mr. Benedict – It is defined in the Code as the line that is parallel to the street that runs to the closest point of the house. So he has all along the whole length as the front.

Mr. Nearpass – So what most people would perceive as the front of their house, without knowing that rule or reg, would be the front door. So I agree, in my opinion, it would be uncharacteristic to have put the shed there. You also have the leach lines in front. The one part I have a little bit of concern over is that you say there is nowhere else you could put that shed, but to me there is a whole lot of real estate back there. If you knew about the Code you probably would have easily be able to find 15 feet from the setback. From what I'm looking at, there is plenty of room.

Mr. Bamann – I don't know why it's not on there, but if you look there is a little fire pit right towards the shed, then there are trees, you'd have to put it in the middle of your yard. I mean I wish I had, I mean I have all the pictures. There is really nowhere to put it if you looked at my actual yard.

Mr. Nearpass – I'm looking at the first picture, if it was 15 feet towards....

Mr. Bamann – Yes, I know. If it was forward, yes, but I placed it because I thought it was the tree-line.

Mr. Nearpass – I understand when you say you thought it was the tree line, but if the shed wasn't there and you knew you had to keep it 15 feet away from the lot line, you would find a spot for it.

Mr. Bamann – Yes, I agree. When I got the letter from the Town saying it's not, I agree with you, it is. It was what I thought it was, was that line and I put the shed what I thought was maybe 35 or 40 feet inside that line and I thought it was plenty, fine. It turns out when I got the letter from the Town, I wasn't. Obviously I could have.

Mr. Nearpass – I just wanted to clarify that. There are other spots you could have put the shed. It ended up where it is today under a misunderstanding. The other map that you gave us clearly

shows the easement and so that was the other part. I know the Town is giving you the OK and you signed the Hold Harmless agreement.

Mr. Bamann – Because that was the easement... Firstly, I didn't know what an easement was before. I didn't know what a drainage easement was. That was for the neighborhood that wasn't even finished. That wasn't even for my current neighborhood. It's for the neighborhood that was on the other side. They were supposed to do a horseshoe easement and they never finished the full neighborhood. That's really what it was for. Heather Lane was supposed to be finished and it never was because of the ...

Mr. Nearpass – So on the map that you provided where it shows 42 feet to what looks like a pad or a structure. Was that originally where you were going to put it or is 42 feet from the road where it is now?

Mr. Bamann – Yes, that's where it is now.

Mr. Nearpass – OK, but it's in the easement? I'm trying to figure out what easement it's in.

Mr. Bamann – Yes, I'm seeing the easement going this way, the other way.

Mr. Benedict rose and showed Mr. Nearpass where the utility easement was and where the drainage easement was. The drainage easement runs north and south.

Mr. Bamann – Is it OK if Donna answers some questions for me? (Absolutely)

Donna Clements, 1252 Heather Lane addressed the Board.

Ms. Clements – I live right across the street. I'm also a civil engineer. One of the things that you can't see on these drawings is that there is some topography with that lot. It's an awkward lot to put a shed on because from that corner where the shed is, it kind of slopes back down.

With respect to the drainage easement, I have a drainage easement in my backyard as well. My drainage ditch is not in the drainage easement. This lot, the way it drains now it kind of sheet flows from that point. The hedgerow is at a high point and there is a corn field behind it. It sheet flows from that corner across to the adjacent lawn and in-between those two houses. That house that you can't quite see, that's the existing swale that ties back into the existing storm sewer. To speak to the drainage easement part, it never functioned as a drainage easement. I've lived there for 17 years. I've been friends with the people who've lived there for the whole time. When you think drainage easement, you are capturing the water and taking it from one point to the next. The shed is not in anything that would actually convey water.

Chairman Reinhardt – As a civil engineer you know that Mother Nature does what she wants to do and once there was a stream in one place...

Ms. Clements – This will never be a stream. It won't even be a channel, never, it's not happening. When they constructed the subdivision, they actually used this site to excavate for gravel and then Bob Barry was the developer.

Chairman Reinhardt – Some engineer put an easement there and it's on the map. It's a drainage easement. I hear what you are saying, that it is more than likely that it's not going to be effective as a drainage easement, but it's there. It's a fact that we need to consider.

Ms. Clements – Absolutely. A couple of other things you were talking about with the whole front yard, side yard setback; I live directly across the street. I can't see it from my house because all along the property line between the driveway and that back tree, hedgerow, is all screened with shrubs. I walk my dog there every night and you can't see it. When you can see it, it's a very nice shed. It's landscaped very nicely. It's not a deterrent to the neighborhood, if anything it makes me want to weed my garden. It really is very very nice. It adds to the character of the neighborhood. It does not in any way deter property values or any such issues.

Leach lines are in front of the house. The front door actually faces west, so it's not where the driveway is. It's a side loading garage. To put a shed on that, it's unfortunate it's that close to the property line, but it's actually, probably the best location to put the shed as far as using it as a property owner. That back hedgerow, were the adjacent parcel ever be developed, would be, I used to be on the Conservation Board; I would recommend that a conservation easement be placed over that. It is very heavily wooded. Sometimes when you are thinking about the setbacks from the property line and the proximity of the shed you are being considerate of the adjacent neighbors; this is a nice hedgerow. Hopefully it would always be maintained and you would have screening to any adjacent parcels that would be developed.

Mr. Nearpass – I'm all set. It's great that you have the support of your neighbors because you don't get that very often when something like this happens. My point was largely that it never hurts to ask questions before you do something like this. I really see it as we are here to help you fix it but there are a bunch of places that you or a civil engineer could have found to put the shed if the shed didn't already exist. One other question was do you know how much it would cost to move the shed?

Mr. Bamann – It would probably be a lot. You would have to move all the landscaping, the rock; I know to actually have the shed put there was a couple grand.

Mr. Nearpass – Including the shed?

Mr. Bamann – No, just to move the actual shed. You want to know how much the shed was also? It was about ten grand.

Mr. Nearpass – I'm just trying to understand the magnitude of the problem if you had to move it, but you don't have an estimate though, right?

Mr. Bamann – I don't now.

Mr. Nearpass – I think I'm all set. Like I said, I am in favor of granting the variance. You went to the Town and you've got the Hold Harmless agreement. Your neighborhood is OK with it. Obviously it's going to run with the land so in 20 or 30 years something completely different could go there unless we add some verbiage to any approval to prevent that from happening.

Mr. Bamann – I've spoken with the Town, with the Hold Harmless, if something happens later on they can move the drainage easement up because that's where it flows in the middle of the yard. They heard that as well.

Mr. Harter – Is the playground moveable? Could you shift the playground and move it to the north and then move the shed to the north?

Mr. Bamann – It's not a smaller playground. You would actually have to cut the bottoms off the ground. To move it, you would actually have to take the bolts down and move the thing. It's not really moveable.

Mr. Harter – So nothing is moveable? (No) The shed is not on a wood foundation, it's on a concrete slab or something like that?

Mr. Bamann – It's actually on crusher run, then concrete or block.

Mr. Harter – So is it keyed in to the concrete slab? In other words is it directly attached to the concrete slab or is it just setting on it?

Mr. Bamann – It's raised up on the concrete slab.

Mr. Harter – So it could be....

Mr. Bamann – But there are big boulders and landscaping all around. You would have to move that.

Ms. Clements – I actually have a shed in my backyard which if I wanted to move it, it's on crusher run. You could literally slide a forklift underneath, pick it up and move it. It wouldn't be that big of a deal. His is not that simple. Part of it is his base and then he does have pavers down. Then there would be the excavation. You would have to excavate that. It would be a pricey thing. It's not a simple pick it up and move it. His playground is fairly large and one of the ones you do anchor down in. There is always the Could You? Sure, you could.

Mr. Harter – Yes, and I think we ask these questions to explore the ability to conform with the regs. This isn't the first time we've had a structure in a drainage easement, which as a civil engineer I hope you know is not a desirable thing. I also understand that a drainage easement may not exactly follow the thread or the swale that you describe. We've had this situation before where that has been the case. One of the applications that came forward, I think we made a condition that the easement be revised to follow the swale that was there versus going where it was presently mapped to go. I'm asking these questions, as Mike said, to find facts and justification for what you have out there. Generally speaking it's not desirable to have any structures in a drainage easement. If the drainage easement isn't covering the thread of the swale or creek or whatever it is then it begs the questions, why is it there and why shouldn't it be revised?

Ms. Clements – My personal opinion is that it should not be there. It does not capture any drainage. It is primarily sheet flow from that backyard, across the backyards, going north towards ...

Ms. Clements used a pointer on the overhead image.

The drainage swale is actually right in through here. This area is lower and it ultimately goes down here. Is there an inlet down there Al? I think there is. There is a pipe down there and then it ties back into the storm sewer on the street. We've had some issues with drainage in our neighborhood. Behind my house, my drainage easement is actually in my woods. My swale is in my yard. Behind my house it actually does flow around and it goes behind all the houses and it makes its way down to the pond.

Mr. Harter – Has the subdivision been completed in terms of its ultimate development? I see a final plan, Heather Acres, and I see the photograph that shows the road stopping at that location. It looks to me like the project has gone through a certain phase and then it stopped.

Ms. Clements – It stalled because these are actually one acre lots. Then, this originally, when it was designed was meant to be a horseshoe. Bob Barry had entered into an agreement with the previous owners of this property which was Zuhlsdorf. If you think back, I don't know how many years ago, we had the whole plume incident. This property here, because it was a big deal

here in the news and we got the Modock Springs program to protect our property values because of that. So there is no current plan to actually develop this. It looks like this should go around and it could, but even if it were to, this is an awkward parcel. It starts at Dryer Road and comes back down. It goes behind everybody's houses on this side of the street. People think "if I can see it, I can put something in it".

Mr. Harter – I'm looking at this final plan, Heather Acres by Paul Crandall. I'm also familiar with the site because I represent Syracuse Sand and Gravel. What I see didn't happen, based on this original design. I think it relates to exactly what you are saying, is that the reason that drainage easement is there is because the site grading plan shows that there is supposed to be a swale there on this person's property. According to what you are telling me, that didn't happen.

Ms. Clements – No.

Mr. Harter – Given that this development to the east will probably never happen, I think that's an interesting piece of information perhaps in your favor tonight. If this were to be developed according to the plan and you told me that you didn't have any water in there right now, my question would be you are only in Phase 1 or 2 of a 3 or 4 Phase project. I think you are correct, I think the project is done. I don't think it's going any further. The reason that your drainage easement is there is based on development that is obviously not going to occur. I don't have any more questions.

Mr. Salsburg – I see there is 42 feet written on this map. It's got the shed sketched in and the house is 42 feet also and it's 100 feet apart. It's kind of hard to tell which is ahead of the other. If the 42 feet is correct, I'm pretty comfortable with that. It would be difficult to determine which was ahead of the other. And the shed looks pretty nice.

Chairman Reinhardt – Just confirming as far as the lot to the east. Al, we chatted a little bit before about it. It's safe to say then that that lot to the east is an unbuildable lot. No one is ever going to build on it. If that development were ever to continue as it was intended in a horseshoe that lot to the east would still be an unbuildable lot. Is that right?

Mr. Benedict – I'd say at the area where it's immediately east of the property in question would not be developable. It widens out down toward Dryer Rd. It might be developable at that point but I can't see anyone developing in that area.

Chairman Reinhardt – If it were to be developed farther to the east, that unbuildable lot, is it a fair assumption that if a drainage easement or some type of drainage needed to be done that that's where it would take place? The current drainage easement would have no effect... Could it be resolved if there were a drainage problem? Is that fair to say?

Mr. Benedict – Yes.

Mr. Harter – It seems to be if this somehow were to be resurrected and come back as another residential subdivision, that given the length of time that since this was originally proposed and approved, it would go through a full environmental review. I suspect that at that time, going through site plan review, they would take a look at drainage even more closely than they first did when this was proposed. It seems to me they would likely revise that drainage easement in favor of something that is more functional.

Chairman Reinhardt – Would anyone from the public like to speak for or against the variance that is for the front of the house.

Ms. Clements – I guess to formally throw my hat in the ring, I am in favor of the variance.

Chairman Reinhardt – OK, so that makes six. There are five letters and they are : Mr. Kaprow, 1249 Heather Ln. is in favor; Mr. Clements, 1252 Heather Ln. is in favor; Mr. Klein, 1254 Heather Ln. is in favor; Mr. McKay, 1256 Heather Ln. is in favor and Mr. Blood, 1258 Heather Ln. is in favor. They are all in your neighborhood and they don't seem to have a problem.

Just on the front variance, do I get the sense from the Board that you are in favor of it?

Let's move on to the side setback. Al measured it. It's 2.5 feet from the side?

Mr. Benedict – That's correct.

Chairman Reinhardt – So it's not on or over the property line, so that is good news for you. We are looking at the same criteria. Donna is there anything you want to add on the side setback issues.

Ms. Morley – No.

Mr. Salsburg – No.

Chairman Reinhardt – Now at least we've explored it, looked at it, they are very common types of issues.

The Chairman went through the criteria for the resolution. The Board members discussed the justifications for the criteria and the conditions.

Chairman Reinhardt – The variance runs with the land, so the shed can always be there.

Mr. Nearpass – My recommendation for a condition is it's as proposed, as it exists today. If the shed were to come down or you wanted to put something else there, that you have to come back to the Zoning Board. We would also hear from the public because it may be 30 years from now and it is somebody else and they want to do something different. Get you neighbors' opinions again.

Chairman Reinhardt – What I'd like to see is whether that shed or any other shed is the same foot print, same dimensions. If you want to more flowers around it, have at it, but I would be looking more on the size of it. Sheds don't last forever.

Mr. Harter – So we are talking the condition being specific to the structure we are talking about and not allowing anything more. (Right) I think that's a great condition.

Mr. Salsburg – I wonder if it's not been graded according to the original plan if sometime in the future that does start back up and becomes graded and it is a waterway for the Town, then the shed would have to come out. They would have to agree to move it.

Mr. Harter – What would most likely happen is that there would be an evaluation at that time and they would see that that might be a conflict and correct it by putting the easement on the other property. My guess is that if it goes to Planning Board approval they are not going to force the owner at the time to put in a drainage easement when they could reconfigure it on the other piece of property. That's what I think would happen from a practical perspective.

Mr. Salsburg – That's kind of a guess. They could say well gee, we have it all drawn up here and approved; why don't we just do what is on the drawing.

Ms. Clements – If another subdivision were resurrected for that adjacent parcel to the east you would have to go in front of the Planning Board. There is nothing grandfathered in, you can't even progress the plans that they had because they were one acre lots and now it's a two acre overlay. Let's say it's 50 acres, they could only put in 25 homes. I can guarantee you with the Code that we have now that that hedgerow that is behind the houses now would be recommended to be put into a no touch conservation easement. Then to say 25 years ago, pretty much when the original site plan was made, there was supposed to be a drainage easement all along the backyards of Heather Lane, residents are not going to go for that.

Also what you can't tell here is that as you go north toward Dryer Road, the topography starts to slope up. You are going to have to trust me on this one, I am a civil engineer, I've looked at these plans extensively, I know the neighborhood; you're not going to have a drainage easement back there as part of a proposed subdivision. Even if there were one, you would have to go before the Planning Board for a site plan review.

Mr. Salsburg – Your expert witness here does a good job.

Chairman Reinhardt – We just need to tighten up the condition so that we can vote. Whatever the foot print is, you have to leave it. If you want it any bigger you need to come back for another variance. Whether it's height, width, depth, anything different, you have to come back, OK?

Mr. Bamann – Absolutely.

RESOLUTION

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on August 6, 2018 from Troy Bamann requesting two area variances to place an existing shed forward of the front line of the existing residence at 1255 Heather Lane, whereas §211-31G(2) indicates that an accessory structure is not allowed forward of the front line of the principal structure; and,

WHEREAS, the existing shed is also less than the 15 feet from the property line, whereas §211-20C states accessory structures must observe a 15 foot property line setback, and

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on August 26, 2018 and whereby all property owners within 500 feet of the application were notified by U. S. Mail; and,

WHEREAS, a Public Hearing was held on September 4, 2018 at which time one resident spoke for the application and five letters were received in favor of the application; and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act per Sections 617.5(c)(10) and 617.5(c)(12) and therefore does not require further action; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for the accessory structure to be allowed forward of the front line of the primary structure and 2.5 feet from the property line:

1. An undesirable change would not be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

Justification: The situation is unique. The house is on a corner lot. The lot is unbuildable to the east; there are five neighbors who are in favor of the project and no neighbors against it.

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

Justification: There are other locations available, however, it would be expensive to move a permanent playground and to move the shed itself. The neighbor who is an engineer has said in good faith that it would be expensive to move.

3. The requested area variances are substantial.

Justification: The request being in front of the house and so close to the side setback, the location itself makes it a substantial request.

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 situation is unique. The residential subdivision was never finished as planned and the drainage easement that is there has no particular use, there is no drainage in it. The Hold Harmless agreement resolution will be presented at the September 10, 2018 Town Board meeting and it sounds like it will go through that will a condition of this resolution. Also the leach lines will not be disturbed with the placement of the shed.

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 to approve both variances:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application of Troy Bamann, 1255 Heather Lane, Victor, NY 14564, for an area variance to place a shed forward of the front line of the existing residence and a second variance to place the shed 2.5 feet from the side property line BE APPROVED.

AND BE IT FURTHER RESOLVED that the following conditions are imposed:

1. The Hold Harmless agreement with the Town regarding the shed being in the Town's drainage easement is filed with Ontario County. If the Hold Harmless agreement with the Town of Victor is not filed this resolution is null and void.
2. That this variance is for the specific shed as proposed and any other structure that does not have the same footprint or size (height; width; depth) can only be installed after a new Zoning Board of Appeals application.
3. Building permits are required for work including, but not limited to, erecting structures, placing signs, pools, fences, mechanical systems, etc. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Planning and Building Department.

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

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

Adopted: 5 Ayes, 0 Nays

2. BARBATO DECK 16-Z-18
6986 Royce Circle

The applicant, Anthony Barbato, is requesting to extend an existing deck at the rear of the house at 6986 Royce Circle. The proposed deck extension would be 60 feet from the center line of White Brook, whereas §211-30A states that no construction shall be permitted within 75 feet of the center line of any stream having a year-round flow.

Chairman Reinhardt – We have your application. You want a deck extension. The problem is that the support for the deck extension encroaches into the centerline of the stream itself.

Carmine Torchia of Torchia Structural Engineering & Design, P.C. addressed the Board.

Mr. Torchia – There is a distance required, it's 75 feet from the centerline of the creek to the structure.

Chairman Reinhardt – Al, did you do a measurement? Is it 46.7 feet, is that what we are working with?

Mr. Benedict – I think the applicant did a measurement.

Chairman Reinhardt – That’s your measurement?

Mr. Torchia – That’s my measurement, I’ll explain it. What happened was that when we first did the initial application, we took it off of the subdivision map and the survey that my client had. Then the review comments came back and said there are some discrepancies. One plan shows farther to the east and the other plan shows farther to the west, etc. When I saw that, I call DDS, our surveyors, right away and we sent them out there to figure out the exact measurements. It turns out that it’s actually 46.7 feet – the distance from the centerline to where we are proposing the deck extension.

For some reason, I don’t know why, when they built the house they had a door that is from the sun room that goes to nowhere. You can see it in the photos. My client just bought the house a couple of years ago and he now would like to extend the deck to the north so that he can utilize that door. That’s basically the reason for us requesting the permit. In order to get the permit we are here requesting the area variance. Right now there is a patio that pretty much takes up the same area that the deck would take up.

We have letters from the neighbors, three of the neighbors that live close by.

Chairman Reinhardt – Yes, three letters and they are all in favor of the project. Mr. Benetti, 6990 Royce Circle; Mr. Mannella, 6988 Royce Circle; Carl Kosmerl, 6989 Royce Circle, it looks like he is also an engineer. They are all in favor. Anything else you want to add.

Mr. Torchia – Like the neighbors said, and we agree, it’s not going to change the character of the neighborhood or have any negative impact on the creek since it is not going any farther than the existing deck is now. To me, I don’t see any major problems and it would make sense to have a deck where there is a door. Right now the door goes to nowhere.

Chairman Reinhardt – All you are looking for are the support posts. You are not putting a pad there...

Mr. Torchia – There was a pad there, there is a pad there already. There is a patio already there.

Mr. Harter – Beneath the deck that is proposed?

Mr. Torchia – Yes, beneath the proposed deck. You can see it on the survey.

Mr. Nearpass – Is it pre-existing, non-conforming? Is that what this is?

Chairman Reinhardt – Are the support posts for the deck going onto the pad or are they going to extend beyond the pad?

Mr. Torchia – They'll be on the pad. The pad will be slightly bigger. (than the deck) The new posts will line up with the existing posts that you see there.

Mr. Nearpass – So the new construction doesn't need a pad.

Mr. Torchia showed the posts and the pad on the projected image.

Chairman Reinhardt – Is that right Al? Do you understand that the support posts are going to go right on the existing pad?

Mr. Torchia – Well there will be a footing.

Mr. Benedict – They'll be digging down for a footing. They will be in the location of the present patio.

Mr. Harter – I don't have any questions and I would just comment that I think it's very minor. One of the photographs that you showed you can see how the deck would match to the currently open, hanging door. I think it makes sense and it's a minor request.

Mr. Nearpass – So the extension is going just to the door or all the way...

Mr. Torchia – You'll see it. We have a plan that we gave you. It's also on a site plan. It goes all the way to the end of the house.

Mr. Nearpass – It goes all the way to the corner. (Yes) OK, I'm OK with that. So part of the structure itself is within the 75 feet, right?

Mr. Torchia – Yes.

Mr. Nearpass – Was that previously existing, non-conforming or how was that done?

Mr. Torchia – The patio that was there you are talking about? (Yes) That was there when my client bought the house. Somebody put it in.

Mr. Nearpass – Are you requesting a variance for the whole thing or just the corner to be no closer than the 46.7 feet?

Mr. Torchia – Yes, that is what we are saying.

Mr. Nearpass – So that will cover...

Mr. Torchia – That will cover both. There is also a hold harmless agreement that was already done that covers the patio. That got approved already.

Mr. Nearpass – I saw that.

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

Chairman Reinhardt – Al, I just wanted to touch on what we chatted about before. If it were 35 feet or closer to the stream, you'd have a problem with it, more of a concern?

Mr. Benedict – Yes, correct.

Chairman Reinhardt – The farther it is away from 35 feet, the more comfortable you are with it. Is that fair enough?

Mr. Benedict – Yes.

Chairman Reinhardt – You are not closer than 35 feet so that is good for you. You are 46.7 feet away. If the variance is granted, that's it, you are not going to go any farther than 46.7 feet.

Mr. Torchia – We don't need to.

Chairman Reinhardt – We touched on three letters that were in favor. We have our attorney with an opinion that the prior Hold Harmless agreement, dated October 30, 2017, applies to this.

Is there anyone from the public who like to speak for or against? (There was no one).

The Board discussed the criteria for the variance.

RESOLUTION

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on August 20, 2018 from Anthony and Linda Barbato requesting an area variance to extend an existing deck (146 sq. ft.) in the back of the house at 6986 Royce Circle. The proposed deck extension would be 46.7 feet from the center line of the stream on the property, whereas §211-30A, states that no construction shall be permitted within 75 feet of the center line of any stream having a year-round flow; 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 August 26, 2018 and whereby all property owners within 500 feet of the application were notified by U. S. Mail; and,

WHEREAS, a Public Hearing was held on September 4, 2018 at which time no resident spoke for or against the application and three letters were received in favor of the application; and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act per Sections 617.5©(13) and therefore does not require further action; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact for the construction of the extended deck to be allowed 46 feet from the center line of the stream:

5. An undesirable change would not be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

Justification: The patio was already in place and the deck will not encroach farther on the stream. The deck is in back and not visible to the public. The Code Enforcement officer's opinion is that anything closer than 35 feet would encroach on the stream.

5. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Justification: A deck was always intended as there is a door on the second story that is not functional and leads nowhere. There is no other method to put a deck on in that location.

5. The requested area variance is not substantial.

Justification: The request is not substantial, the patio is already in place under the area for the proposed deck.

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

Justification: It's a minor stream and there are only two support posts going in.

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

On a motion made by Scott Harter, and seconded by Fred Salsburg:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application of Anthony and Linda Barbato, 6986 Royce Circle, Victor, NY 14564, for an area variance to construct and extended deck 46 feet from the center line of the stream with year-round flow BE APPROVED.

AND BE IT FURTHER RESOLVED that the following conditions are imposed:

- 1. That during construction there is soil erosion control and no soil makes it to the stream.

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

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

Adopted: 5 Ayes, 0 Nays

Mr. Torchia – Thank you very much.

3. PERKINS SHED 18-Z-18
 1348 New Seabury Lane

The applicant, Gary Perkins, is requesting an area variance to allow a storage unit forward of the front line of the house, whereas §211-31G(2) states no accessory structure shall be forward of the primary building.

Chairman Reinhardt – I am informed that the applicant will withdraw the application.

Mr. Gary Perkins addressed the Board.

Mr. Perkins – I'll make this very easy. I'm withdrawing my application for a variance. Thank you for your time.

Mr. Harter – That's one for the record books.

Mr. Perkins – Based on several meetings with my neighbors, both as a group and as individuals, they were all OK with it until the eleventh hour. They called me last night and one of them wanted the shed moved to the spot where I least thought they would want it. It will be right in their center line of vision from their front window. I said I was fine with it, because it makes it more convenient to me. Thank you.

EXTENSION OF TIME FOR BUILDING PERMIT

4. 6739 NY STATE ROUTE 96

17-Z-18

Chadi Sarkis Renovation

Applicant requests an extension of time for a building permit issued for renovations to 6739 NY State Route 96. The building permit was originally issued on 8/24/2015 and has since been renewed twice by the building department. Mr. Sarkis did commence work with the original building permit. §83-4 states that after two 12 month extensions of a building permit any extensions thereafter may only be granted by the Zoning Board of Appeals upon application and payment of the applicable fees.

Chairman Reinhardt – We have a request for an extension of time for a building permit. You've been patient. Thanks so much for your patience.

Mr. Chadi Sarkis, 572 County Road 9, addressed the Board.

Mr. Sarkis – It's OK. I've been patient working on my house.

Chairman Reinhardt – So you've already had two extensions and now you are looking for a third. Tell me, how close are you to being done?

Mr. Sarkis – What I'm doing now is I have the second floor almost finished with dry wall. When I bought the house it didn't have a second floor. It was a two bedroom, but when you went up the stairs your head would hit the ceiling. I said this is not right.

Chairman Reinhardt – I want to hear all about it but I would like the Board to understand how far along in the project are you. So are you 50% done, 70% done, 90% done? Give me a number.

Mr. Sarkis – I have 50% or more than 50%, about 50%.

Chairman Reinhardt – You are more than 50% done? (Yes) Less than 60%, somewhere between 50% and 60% done?

Mr. Sarkis – Yes.

Chairman Reinhardt – What would be your best guess on when you would be done with the project?

Mr. Sarkis – I wanted to finish it this summer but my father-in-law got sick and my wife and I helped him. I was very busy with him and was only able to work on my house one day per week for two hours. I am a full time handy man and I don't have time to work on my place but now I'm trying to put pressure on myself to work on my house two days a week.

I'm trying to do the best work because I see a lot of problems with people's houses. I am trying to fix them in my place and make it the best. I'm trying to do an amazing job.

Chairman Reinhardt – How much time are you spending on it now? Give me hours per week.

Mr. Sarkis – I'm trying to spend two days a week. I'm trying for Saturday and Sunday. Monday through Friday I'm with customers and Saturday and Sunday I'm at my house.

Chairman Reinhardt – So with two days per week, when do you think you will finish?

Mr. Sarkis – I'll try to finish it by the end of spring next year.

Chairman Reinhardt – Spring of 2019? (Yes Sir)

Mr. Sarkis – After the spring, like the end of the spring.

Chairman Reinhardt – So the first day of summer is June 20th.

Mr. Sarkis – Before my birthday. It took a lot out of me, this house.

Chairman Reinhardt – I'm not saying that's OK. I'm trying to get a date when you think you are going to be finished. You think it's going to be June of 2019, your target completion date?

Mr. Sarkis – Yes, I'm telling myself I need to do this. I started working on the second floor drywall, now finish up there, yes, the big job is done. The construction, the roof, the shingles, siding. Those were the big jobs and I did them all myself.

Ms. Morley - What is going to happen if you can't finish this on time?

Mr. Sarkis, No, it's too much for me, I need to go on vacation. I can't go on vacation. I want to finish it.

Ms. Morley – It's kind of sitting now as an eyesore.

Mr. Sarkis – After my father-law passed this year I told myself, now is the time for my house.

Ms. Morley - Where are you at, how much more money, would you say, you need to put into this to get it done?

Mr. Sarkis – After I finish the drywall I still have the kitchen, the flooring, and the bathroom. Then, the house will be ready to live in.

Chairman Reinhardt – I think what Donna is asking is how much in materials do you need to finish.

Mr. Sarkis – Material or money?

Ms. Morley – Material.

Mr. Sarkis – Material, I need the flooring...

Chairman Reinhardt – In dollars.

Mr. Sarkis – I'm thinking it's about, because I'm doing the job, I'm thinking about \$25,000 I still need to spend. I bought a lot of things as deals so I saved some money.

Chairman Reinhardt – Do you have \$25,000 to put into the house?

Mr. Sarkis – Oh yes, we have \$25,000.

Mr. Nearpass – So the first day of summer you will be done?

Mr. Sarkis – Yes, I think so. It's too much, I need to go on vacation.

Mr. Nearpass – I don't have any more questions. You need to finish the home, it just comes down to timing.

Mr. Sarkis – What happens is you can't bring any contractor to work. Any contractor that wants to come to your place, they think they are the only contractor in Town and you want to go with them. Their prices are outrageous. I say no, have a nice day, I would not like to use you. I would never give those prices to people. One guy gave me a \$15,000 estimate that took me three days by myself. I did the entire roof myself, 55 bundles...

Mr. Nearpass – It sounds like you have every intention of finishing it.

Mr. Sarkis – Oh yes.

Chairman Reinhardt – You bought this house at the County tax auction, right? It was in rough shape.

Mr. Sarkis – Yes. I had never been inside and when I went inside I fell through the floor and thought are you kidding me? So I removed the floor. The only section I never removed is like a living room area, but the rest all changed including taking walls out.

Chairman Reinhardt – What is your occupation, trade?

Mr. Sarkis – Carpenter.

Chairman Reinhardt – So you know what you are doing? (Yes)

Mr. Harter – When did you start the project?

Mr. Sarkis – I bought it in 2015. I never started until later. Winter came and they had a tarp on the house; I couldn't do a lot of work.

Mr. Harter – The first permit started in 2016 then?

Mr. Sarkis – 2015 I asked for a permit for building but I couldn't do a lot of work on the outside of the house. I started working inside, little by little. When summer came I started expanding.

Mr. Harter – So this will be an approximate four year project, is that right?

Mr. Sarkis – With one guy working. It's a one guy job.

Mr. Salsburg – Is the electrical in?

Mr. Sarkis – Yes, I changed the electric.

Mr. Salsburg – And the circuit board?

Mr. Sarkis – I put 200 amps. They said 100 amps, I removed it and put 200 amps. When I walked into the house all the electric was galvanized metal, the wires inside a metal pipe. I took all those out. I left only one outlet in the house, I shut the water off, and I brought in my saw and took all the plumbing and all the electric out. I didn't want to see it ever again. It was galvanized water pipes too. They had too many bedrooms on one box. I made it so that every bedroom had one breaker. The electric inspector came and said I could do two bedrooms on one circuit breaker. I said OK, I can do that, but I put more outlets, more switches.... When I go to people's houses I see more problems. You need light when you go from one room to another. I put more light switches all over.

Mr. Salsburg – Do you have heat?

Mr. Sarkis – I have furnace heat.

Mr. Salsburg – Is it hooked up?

Mr. Sarkis – Yes, it's hooked up but what I'm doing now, I have everything connected to the second floor so when I finish with the first floor I want to run the trunk to the basement. When I turn the heat on in the winter I can make it blow in the basement and then the heat will start raising up. I only ran it twice this winter. I used kerosene before. I worked in the winter and I had the kerosene running and all of a sudden I didn't feel good. I decided I couldn't use kerosene anymore and put in a furnace. The Carbon monoxide was so much and I had everything open. I don't know how people use it, it's scary.

Al saw the house the other day. John has seen the house. They are all good people here. The inspectors are all amazing. Any question I have, I come here and they help me. I like the Town.

Chairman Reinhardt – So you are asking for ten more months. If my math is right, September to July 1st is about ten months. And you can finish? (I can finish).

What are your thoughts if we pick a half way point, if in January sometime you poke your head in there and you can see he is doing all right or he can't make it.

Mr. Benedict – I can do that.

Chairman Reinhardt – So when Al gives you a call, you will open up the door and he can poke around in there.

Mr. Sarkis – I'll give him a key, he can go in there anytime.

Mr. Benedict – No, no, no.

Chairman Reinhardt – I think the Board is giving you a little more leeway but I think this is it. We'll pick a date, July 1st, it's a week after summer starts, and you are going to be done, done, done. Is the Board OK with that?

Mr. Nearpass – I'm OK with at least that.

Mr. Sarkis – Give it another year, pick another year.

Ms. Morley – Is this going to be one unit or two units?

Mr. Sarkis – One unit. I didn't know about the two units until after I started working and decided I couldn't change it. It's too much.

Ms. Morley – And are you moving in or are you going to rent it out?

Mr. Sarkis – My intention is to move into it. That's why I'm trying to make it the way I want it. I have a big master bedroom. The smallest bedroom in the house is a 12' x 12'. In people's houses all the bedrooms have 30 inch doors. Downstairs I made 36 inch bedroom doors and in the bathroom, there are two doors. One I had to make 34 inches because of a beam but the other one I made 36 inches because in case someone has a wheelchair they can go to the bathroom.

Chairman Reinhardt – You know what a punch list is, right? I don't think Al or the Board is going to want to hear from you on June 29th, I'm done and then he has a punch list for you and you're not done. Give him a call in early June so if there is a punch list you can get it done, fixed up... So your electrical inspection is done, the building inspection is done, everything is done by July 1st.

Mr. Sarkis – Last time the electric inspector came he said the next time he will come is when I'm finished.

Chairman Reinhardt – I just want to make very sure that you are done on July 1, 2019. Al do you have any more questions or concerns?

Mr. Benedict – No.

Chairman Reinhardt – Al, what is the fee for this? His fee last time was how much?

Mr. Benedict – The fee last time was \$300.00. There is nothing in the book that says if there is a fee or what it is if you extend it.

Chairman Reinhardt – If it's going to be another \$300.00 does that sound logical?

Mr. Nearpass – If you give him another 12 months.

Chairman Reinhardt – He's had multiple extensions.

Mr. Sarkis – I'm making an amazing house. The Town gave me a good deal last time.

Ms. Morley – It says he paid \$125.00 last time.

Chairman Reinhardt – That was approved by Jack Marren. If we do another \$125.00? (Yes) So if we do another \$125.00? (We can do that) Then that's what it will be.

Mr. Sarkis – Do it now or come another time?

Chairman Reinhardt – When the office is open. Go enjoy your dinner.

RESOLUTION

WHEREAS, in a letter dated August 21, 2018 from Chadi Sarkis, who lives at 572 County Road 9, an additional extension of time was requested for the building permit issued to make reservations to 6739 New York State Route 96.

WHEREAS, Section 83-4I, Building Permit Time Limits, indicates that building permits shall become invalid unless the authorized work is commenced within six months following the date of issuance. Building permits shall expire 12 months after the date of issuance. A building permit which has become invalid or which has expired pursuant to this subsection may be renewed upon application by the permit holder for up to two twelve-month extensions upon payment of the applicable fee and approval of the application by the Code Enforcement Officer. Any extensions thereafter may only be granted by the Zoning Board of Appeals upon application and payment of applicable fee; and,

WHEREAS, the applicant applied for and received a building permit for renovations at NYS Route 96 on August 24, 2015. The permit was renewed on August 16, 2016 and August 24, 2017 and has expired; and,

WHEREAS, the structure has not been completed or issued a Certificate of Occupancy; and,

On a motion made by Scott Harter, and seconded by Mathew Nearpass:

DECISION:

NOW THEREFORE BE IT RESOLVED that the Town of Victor Zoning Board of Appeals grants an extension of time until July 1, 2018 for building permit BP2015-0382 with a fee of \$125.00 for the renovations of a single family dwelling at 6739 New York State Route 96.

AND BE IT FURTHER RESOLVED that the following conditions are imposed:

1. That the renewal fee for the permit be paid prior to the issuance of said permit extension.

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

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

Adopted: 5 Ayes, 0 Nays

Chairman Reinhardt – Good Luck!

Mr. Sarkis – Thank you.

On a motion from Michael Reinhardt, seconded by Mathew Nearpass, it was unanimously agreed and RESOLVED, that the meeting was adjourned at 8:20 PM.

Debby Trillaud, Secretary