

TOWN OF VICTOR ZONING BOARD OF APPEALS, January 18, 2022

A regular meeting of the Town of Victor Zoning Board of Appeals was held on January 18, at 7:00 p.m.

PRESENT: Michael Reinhardt, Chairman; Mathew Nearpass, Vice-Chairman (via ZOOM); Donna Morley; Sarah Mitchell; Fred Salsburg

OTHERS: Darryl Klimowski, 1058 Natures Way; Kathy Pomponio, Verizon Wireless; Mike Crosby, Verizon Wireless; Max Vasta, 681 Phillips Road; Wasif Sharif, Verizon Wireless; Robert Burgdorf, Verizon Wireless; Ron Evans, Verizon Wireless; Spencer Read, Mitchell Design Build; Brad Humberstone, Mitchell Design Build; Bill Mendick, MCA Group; David Cocquyt, CoMark Holdings, LLC; Brennan Marks, Marks Engineering; Drew Cusimano, Victor Town Board; Al Benedict, Town of Victor code enforcement; Suzy Mandrino, Town of Victor; Kim Reese, ZBA secretary

Chairman Reinhardt called the January 18, 2022, Zoning Board of Appeals meeting to order at 7:00 pm.

PLEDGE OF ALLEGIANCE

Chairman Reinhardt welcomed everyone and announced that board member, Matt Nearpass was joining virtually. He gave the meeting announcements; location of emergency exits and restroom. The chairman asked that guests please sign the attendance sheet. Agendas and business cards are at front entrance. He asked to silence cell phones and that applicants use compass directions and descriptions to create a complete meeting record. Applicants will have opportunity to be heard with as few interruptions as possible. We'll talk one at a time, not over each other. Also, to let the board know if there are additional exhibits.

PAST MINUTES:

On motion of Fred Salsburg, seconded by Sarah Mitchell:

RESOLVED, that the minutes of the meeting held on December 6, 2021, BE APPROVED.

Adopted: Ayes 5, Nays 0

PUBLIC HEARING

BELL ATLANTIC/VERIZON, 23-Z-2021

Bell Atlantic dba Verizon is requesting to construct a 140' monopole on 100' x 100' lease parcel area at 1533 State Route 444 and within approximately 55' from closest property line. Applicant is requesting an area variance to §211-47D(1)(a) which states property line set-back is tower height plus 20'.

Chairman Reinhardt – First, we're bringing back the Bell Atlantic application.

Mr. Burgdorf – Good evening. Robert Burgdorf with the law firm, Nixon Peabody here back again on behalf of Verizon Wireless. Along with others with me, whom I'll reintroduce for the record to the extent that their testimony becomes necessary.

Again, this is an application for a wireless telecommunications facility, specifically a 140-foot monopole next to the water tank on Route 444. At the December meeting with the ZBA we reviewed the project, need for the height, need for the project and why it triggered a need for an area variance for this board in order to keep the pole close to the water tank to consolidate services. So, for aesthetic reasons you want to keep them as close to the water tank as possible. It's also where the landlord wanted it to get is out of his field so it would maximize his ability to farm.

Since then, we've had two meetings with the planning board. The planning board had some landscape changes which we've done. Confirmation it wasn't lit, which we've taken care of. A couple other things with the planning board. So, we went through that process with the planning board they don't really involve this board those issues but just wanted to note that for the record. We have been there twice, and the planning board last week issued a negative declaration for purposes of SEQR as lead agency and then approved the special permit and site plan. So, we are back the last procedural requirement is back in front of this board for the area variance, so we're seeking tonight an approval for the area variance. It was requested in order to place the tower close to the property line out of the farmer's field as much as possible and as close to the water tank as possible for aesthetic purposes.

Chairman Reinhardt – Good. Thank you. Matt, do you have any questions?

Mr. Nearpass – No questions from my side.

Chairman Reinhardt – Fred, any questions, comments?

Mr. Salsburg – It's a big ask I think but I can vote for it. The benefits outweigh the problems.

Chairman Reinhardt – Okay, Donna, questions, comments?

Ms. Morley – None.

Chairman Reinhardt – Sarah?

Ms. Mitchell – No.

Chairman Reinhardt – Okay, just a quick review from the last time. I think you thoroughly provided us with valuable information. Indicated that there was case law that provided that the criteria for an area variance for this type of situation for a cell tower monopole, that it's a bit relaxed. This is a necessary piece for cell coverage. I agree with you, and I think the board would as well, that you're doing everything you can to, if you will, maximize that farmland area as well as keeping as close to the tower, aesthetics are in play as well. The county planning board determines it's a class 1, 13 in favor, none opposed. There was one individual from the last meeting that we had, she was opposed to it, provided us with some information that we needed to look at. Hopefully everyone had a chance to look at it. I think you provided, again valuable information for what we need to look at as a whole.

With that in mind, unless there are any comments, questions from the public, we can go through the criteria. Hearing none, the first, the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. As indicated with the cell coverage and that tower that needed to be taken off of the water tower and on to a monopole and the parameters of it is necessary for where it is and the location of it. Anyone want to add anything for the first criteria?

I apologize, I think I did that backwards. Let me do this again. 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 would be the same, I think the applicants' done everything they can to maximize the farmland area and create as aesthetically pleasing as possible. It is necessary for that particular location for the cell tower to be there. Would anyone want to add anything for the first criteria?

Second the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant

to pursue, other than an area variance. I think given what the applicant has told us the age of the water tower, the location of the cell tower on the water tower that it was necessary to move it and (inaudible) it. There really isn't any other way or any other location that is feasible for that particular cell tower. Would anyone want to add anything else to the second criteria?

Third, the area variance while it is substantial for what they are asking for, again based on the first and second criteria there really isn't any other way that I think this can be achieved. Would anyone like to add anything or comment on the third criteria?

Fourth, the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. I haven't heard anything; I don't think the board has either that this location and the ask for the area variance would have any kind of adverse impact on the physical and environmental conditions of the neighborhood or district. Anyone want to add anything or comment on the fourth criteria?

Fifth, the alleged difficulty is self-created. While it's not determinative, it is a factor in the area variance. Would anyone want to add anything to the criteria or conditions to this proposed variance? Hearing none, I would entertain a motion for approval.

Ms. Morley – I'll make a motion for the Bell Atlantic dba Verizon.

Chairman Reinhardt – Donna. A second?

Ms. Mitchell – I'll second.

Chairman Reinhardt – Thank you Sarah. Any further discussion. All in favor of the motion, say aye. (Aye) Any opposed? Motion carried. Thank you for your time. Good luck to you.

Mr. Burgdorf – Thank you.

DARRYL KLIMOWSKI, 1058 Nature's Way, 24-Z-2021

Area variance to place a shed 11' from the property line when §211-10C states property line set-back is 15'.

Chairman Reinhardt – Next, we have Darryl Klimowski. Sorry if I mispronounced, did I pronounce it right?

Mr. Klimowski – You did.

Chairman Reinhardt – You are looking for a variance for a shed, 11 feet from the property line. As I understand it the shed has been there for seven years. It's a 10 x 12 shed.

Mr. Klimowski – That's correct.

Chairman Reinhardt – We're on the same page at least with that. So, go ahead, make your application and we'll go from there.

Mr. Klimowski – The shed's been there for quite a while. Originally, I had a company install it, I thought I needed 10 feet and then I've got these leach lines underground that run, that's right where my septic leach lines go. So, I put it as far as I could up against the closest leach line so I kind of had to squeeze it in there and it actually could be more than 11 feet to the west property line with my neighbor. Because he

found the pin back there last week and he kind of measured it and he thinks it probably is 15-16 feet, but when I did it I came up with 11, so.

Chairman Reinhardt – Is he an engineer?

Mr. Klimowski – No, he's just a dude.

Chairman Reinhardt – So for now we're going to go with the code enforcement officer that says you're 11 feet. Okay, keep going.

Mr. Klimowski – So, in my yard I've got two rows of grapevines, I've got a bunch of fruit trees. There's not where really else I can place this thing, so I've kind of pinned in where I had to go with it. It's been there for a while, it doesn't seem to bother anybody back there nestled in the corner by the trees and everything, so I'm kind of looking to keep it where it is if I could.

Chairman Reinhardt – You're all done? Go ahead.

Mr. Klimowski – No other than that it was my original decision to put it where it is, so I apologize for that I didn't get the facts straight or get everything nailed down the way it should have been probably, but like I say it's been there for quite a while. It doesn't seem to affect the landscaping or the nature or anything like that. No neighbors have a problem with it. My neighbor that's right there did provide a letter saying he's cool with it. If that matters, but other than that I'd just like to keep it as it is if it's possible.

Chairman Reinhardt – Your neighbor, he's not here, right, the letter?

Mr. Klimowski – No, he gave me a letter yesterday.

Chairman Reinhardt – Jerry Hedden at 1056 Natures Way. Doesn't have an issue with it.

Mr. Klimowski – That's correct.

Chairman Reinhardt – We're going to ask you some questions. Certainly, answer them if you want to add more later you certainly can. Sarah, do you have any questions?

Ms. Mitchell – No. Just a comment. I drove over on Sunday, and I think I could barely maybe see the shed from even the road, so I think 4 feet is a very minimal ask. I'm fine with the application as presented.

Chairman Reinhardt – Okay. Donna?

Ms. Morley – Same thing. Drove over there and you can not see it and it's nestled in.

Chairman Reinhardt – Fred, questions, comments, concerns?

Mr. Salsburg – I think this is a great case of anybody wanting to use their property the way it already is. You got my vote; you can keep it there for all I care.

Chairman Reinhardt – Okay. Matt, questions, concerns, comments?

Mr. Nearpass – I don't disagree with what my colleague just said but I just generally have to ask you're looking for four feet, right?

Mr. Klimowski – That’s correct.

Mr. Nearpass – What if you just had to slide it over by four feet?

Mr. Klimowski – I really can’t because right along side of the shed is a leach line, so I’d be going right over top of it.

Mr. Nearpass – But the leach lines are what, 18 – 20 something inches below ground. You’re not going to have to dig or anything right?

Mr. Klimowski – No, but I was told you can’t put anything on top of a leach line.

Mr. Nearpass – And, there’s no other place that’s kind of feasible for you to?

Mr. Klimowski – No there’s two rows of grapevines. I don’t know if you can see them there on the other side of the leach field that kind of run north/south and I’ve got a bunch of fruit trees and a pool is going in which might not be in that picture yet, which takes up most of the back yard. So, it’s kind of limiting all my spaces.

Mr. Nearpass – Okay and you said earlier, no objections from the neighbor, right?

Mr. Klimowski – That’s correct.

Mr. Nearpass – Okay. I’m all set.

Chairman Reinhardt – Great. Looking at the survey map and I think to Sarah’s point as well as Donna’s, you’re 628 feet from the right-of-way, plus or minus. Is that about right?

Mr. Klimowski – Sounds about right.

Chairman Reinhardt – Okay and as far as what Matt was getting to and relocating it. Whether it’s being moved four feet or forty, fifty sixty feet any idea what the cost it to move the shed?

Mr. Klimowski – No idea.

Chairman Reinhardt – And your neighbor who’s at 1056 that would be to, is he on the closest side to where that shed is?

Mr. Klimowski – Yes, he shares that property line with me.

Mr. Salsburg – It would be to the west.

Chairman Reinhardt – Alright. Any electricity in there? You don’t have any intention of putting electricity in there?

Mr. Klimowski – No. No, I don’t.

Chairman Reinhardt – Alright then. I think we have it pretty well set. I have to ask anybody in the audience want to speak for or against the application. No. We have one for. Suzy, is there anyone online that you could tell? No. Alright then, let’s walk through the criteria. Anything you want to add?

Comments, concerns?

Mr. Klimowski – No I think that covers it; I think.

Chairman Reinhardt – Alright let's go to the first criteria. 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. Although the shed has been there for approximately seven years and it is some 600 plus feet from the right-of-way as well as a neighbor that doesn't object to the current location of the shed, it doesn't appear that there would be any kind of negative change to the character of the neighborhood or detriment to nearby properties by granting this variance. Anyone like to add comment on the first criteria?

Mr. Benedict – I just wanted to correct one of the numbers that you used. According to the drawing it's 368 feet. It's the lot that's 628 feet deep.

Chairman Reinhardt – Gotcha. I see the number now. I misread, it's 300, your eyes are better than mine. 368? 368 feet from the right-of-way. Thank you, Al.

Mr. Klimowski – Yeah, the whole back portion of my property is conservation kind of area, I can't touch it. I don't know how deep it's got to be a couple hundred feet deep at least. I can't touch.

Chairman Reinhardt – And, as this board has known before those who have wanted to put things in those conservation easements have been told you can't do that.

Mr. Klimowski – Yeah, I stay way a way from it. With everything. They made that clear when I bought the place.

Chairman Reinhardt – Good. On to the second, the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. Short of moving that shed, the 10 x 12 shed clear across the other side of the property there really isn't any other way to solve it and primarily it's because the leach field prohibits him from moving it. Would anyone like to add anything to the second criteria?

Third, the area variance is not substantial. The applicant is looking for four feet, especially given the size of the property and also with his neighbor being willing to accept the current location it does not appear that it is substantial. Anyone like to add anything to the third criteria?

Fourth, the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. It's been there for seven plus or minus years. There's hasn't been any indication that there has been any impact on the physical or environmental conditions in the neighborhood, so I think it's a safe position to have that it hasn't had any impact. Would anyone like to add anything to the fourth criteria?

Fifth, the alleged difficulty is self-created. The applicant admits that he put the shed there. Sounds like unknowingly, but that isn't an all or nothing, if you will piece of the criteria. Would anyone like to add anything for conditions to the proposed variance?

Hearing none, I would entertain a motion for approval for this variance.

Mr. Salsburg – I'll make that motion.

Chairman Reinhardt – Fred. I need a second.

Ms. Morley – I'll second.

Chairman Reinhardt – Thank you, Donna. Any further discussion? Hearing none. All in favor, say aye. (Aye) Any opposed? Hearing none. Very good. Thanks so much. Have a good night. Good luck to you.

Mr. Klimowski – Have a great night, guys.

CoMARK HOLDINGS, LLC, 7241 Valentown Road 25-Z-2021
Area variance for an existing barn to be in front of the principal structure; a proposed dwelling in proposed Valentown Meadows subdivision, 7241 Valentown Road.

Chairman Reinhardt – The next application is CoMark Holdings, 7241 Valentown Road.

Mr. Marks – Good evening. I'm Brennan Marks with Marks Engineering, the designer on the project presenting this to you. What we have is an existing barn building that's on the north side of the Valentown Road. It's associated with a house that's on the south side of Valentown Road. There's the property there. It is about 300 feet east of High Point Road which is where the Constellation offices were, are. So, the intent of the property is to subdivide it for four new single-family homes and the existing home on its own lot and then three lots that will remain unbuilt at this time. The variance request we need here today is the accessory structure in front of a principal structure which would allow us to build a house on lot number 2. The barn does encroach on the right-of-way. It is our intent to keep the barn. It's in fairly good condition. It matches a lot of historic barns in the area. It's not a historic landmark or anything, but it's a nice piece of the historic fabric of Victor, especially this area. So, our intent is to maintain it.

Chairman Reinhardt – That's it? Okay, Matt, questions, comments, concerns?

Mr. Nearpass – None at the moment.

Chairman Reinhardt – Fred, questions, comments, concerns?

Mr. Salsburg – Is it clear of the right-of-way of the road?

Mr. Marks – No, it's not. It actually encroaches on the right-of-way.

Mr. Salsburg – By how much do you think?

Mr. Marks – 8.4 feet. The location of the structure is in relation to the right of way is essentially grandfathered in.

Chairman Reinhardt – Donna, questions, comments?

Ms. Morley – When we're looking at the driveway that is going in there, that's the front point of the house?

Mr. Marks – That's correct. Yes.

Ms. Morley – That's it, thank you.

Mr. Salsburg – What's the future intention of use of the barn?

Mr. Marks – It's going to be an accessory structure to a residence.

Mr. Salsburg – Lawnmowers, residential equipment.

Mr. Marks – Storage, residential storage, lawnmowers. Don't think it will necessarily be meant for a car, but they could use it for storage for the most part.

Mr. Salsburg – Is the doorway on the side opposite of the road?

Mr. Marks – The doorway faces west which is towards High Point.

Chairman Reinhardt – Anything else, Fred?

Mr. Salsburg – No.

Chairman Reinhardt – Donna, you all set?

Ms. Morley – I'm done. Thank you.

Chairman Reinhardt – Sarah, questions, comments, concerns?

Ms. Mitchell – Will there be any upgrades to the barn? You say it's in fairly good condition, but I'll be honest when I drove by, I thought this is the barn they want to keep? So, I thought there was maybe historic value or something along those lines but there isn't.

Mr. Marks – That's a good point. So, it's an old barn. There's no question about that. Structurally, I was able to walk though it and I didn't see any signs of the structural failures. Obviously, whoever would build the house or buy the property would have more interest to maintain it which could be fixing some of the siding that's missing. At this point we have no other intentions other than maintain the barn where it is, subdivide the lots, sell it to someone that would build a house there which would then also upkeep the barn.

Ms. Mitchell – I guess my next question is Al, the interpretation of it being in the front yard, because where the driveway is located to me it looks more like a side yard. Or maybe potentially particularly in the rear yard.

Mr. Benedict – The front yard is determined as the road where you derive access.

Ms. Mitchell – So this would not be a road where the driveway comes off to?

Mr. Benedict – Say that again.

Chairman Reinhardt – It's because the shared driveway enters Valentown. The driveway that connects the shared road is not the driveway you look at, pursuant to the code. The code looks at

Ms. Mitchell – It's Valentown Road.

Chairman Reinhardt – It's the dedicated road.

Mr. Benedict – Yes.

Mr. Marks – I'm sorry was that your question, Donna, earlier?

Ms. Morley – Yes.

Mr. Marks – It thought you meant where the entrance off of Valentown was the front.

Ms. Mitchell – That's all I had, Mike.

Chairman Reinhardt – How big is the barn?

Mr. Marks – Good question. It's approximately 30' x 30'.

Chairman Reinhardt – I can't speak for the board but let me back up. One of the concerns it appears the code enforcement officer has is the sight distance and specifically coming westbound. So, question I have for you is if this board puts a sunset provision on that barn should that barn ever be razed it's gone.

Mr. Marks – That would be absolutely fine by me. As soon as the barn becomes razed or dilapidated or unuseful I would just say that it would be able to be removed, yeah.

Chairman Reinhardt – I think the concern that I would have is because it's already encroaching and I understand it's been grandfathered in, but because there are sight distance issues I think there's reason for in this case to have a sunset provision apply to it that if that barn is razed that the variance would be discontinued.

Mr. Marks – Yes, so no one could come in and build a pole barn in the same location because the barn was taken down.

Chairman Reinhardt – Let me ask the board on that issue. Matt any thoughts on that on putting a sunset provision in this particular case?

Mr. Nearpass – I'm not necessarily sure about a sunset, but essentially something that is maybe descriptive enough so that you really can't. I don't know I guess I go back and forth. If someone were to take the barn and let's just say they were allowed to knock it down and put a barn in the same footprint, I don't think it would really matter to me, so in my opinion as long as they stay within that footprint, and it's a barn, then I'd be okay with it. But sure, if it turns into something else or it gets bigger or something to that effect we're also not talking about a typical subdivision here with houses all in alignment which generally I think the code is meant for, where the houses are all in a row and it would really be a bit of an eyesore if something was forward, in the front yard we obviously don't have that here, so I can go either way with it, but I kind of in favor of as long as it stays in the same footprint and it's a barn, I'm okay with it.

Chairman Reinhardt – Fred, what do you think about it?

Mr. Salsburg – I think I'm voting for this barn and no other one. If something happens this isn't used any more. The variance is gone.

Chairman Reinhardt – You'd be in favor that this variance really, you know, variances apply to the property, but if the barn is ever razed then no barn should be footprint or not.

Mr. Salsburg – That's my thought.

Chairman Reinhardt – Okay. Donna, what do you think about that?

Ms. Morley – Can I ask him a question?

Chairman Reinhardt – Sure.

Ms. Morley – What would be the cost to raze the barn? What’s the big thing to keep this barn on this property?

Mr. Marks – Well the cost to raze it, probably be 15 to 20 thousand. It’s also, in our opinion it’s like the other barns as you head down Valentown Road, so it’s not a bad looking sight to see. And, it’s a useful structure.

Chairman Reinhardt – It seems from Sarah’s standpoint, it’s not in good shape.

Ms. Mitchell – It was just my thoughts when I drove by.

Mr. Marks – If you were to go in it and you’re welcome to, it’s a big old timber frame barn. There’s not very many of those left that are standing.

Ms. Morley – It is a timber frame?

Mr. Marks – It is.

Ms. Morley – Okay. Thank you.

Mr. Marks – I just want to clarify my statement about the size. It’s 30.2 feet wide east to west and 40.2 long north to south.

Chairman Reinhardt – But where are you Donna on that, is it just for the barn or it because of the I think what the applicant was suggesting is aesthetically there are other barns on Valentown Road that yours complement, but there are other barns that.

Ms. Morley – I’m okay as long as as long as if that is razed another one cannot be put there.

Chairman Reinhardt – Okay, Sarah, where are you on this?

Ms. Mitchell – I’m along that same line that we’re approving this specific barn and this specific place. If this barn were to fall down or there was damage to it that not repairable, then that’s our chance for the owner at that point to correct this and if they want to put up another barn then they could follow code. So, I would agree with the condition being that in this condition where it’s located without changes. It’s this specific barn we’re okaying.

Chairman Reinhardt – Al, do you have any thing thoughts on our query, question here on barns on that road and 8.4 feet in the right-of-way if this board decides that it’s a one and done, it’s just that barn and if the barns ever razed because really of that justification could be is the sight distance issue coming out of lots two and seven.

Mr. Benedict – My only real concern is that you’re requesting the variance to be sunset if the barn were razed or destroyed however the town code does have a provision that if a preexisting nonconforming

building which in my opinion that's what this is and that it is within the right-of-way that it is allowed to be rebuilt within one year. I think if you're going to grant a variance with that stipulation that it cannot be replaced that you somehow tie it in with that section of the code.

Chairman Reinhardt – Alright, so I think then it sounds like at least in my mind from potentially creating a bigger problem than what's there. What I'd like to do then is leave it without those conditions, go through the criteria but before I do anyone in the audience want to speak for or against the application? Hearing none.

Mr. Nearpass – I do think that if the barn were new construction and that was the only place that a brand-new barn could go, probably aside, obviously the right-of-way issue, but it's been there for quite a while. I'll speak for myself I don't see why I would have an issue with it, again because the development itself is where's the front of the house type of debate like we normally have?

Chairman Reinhardt – I think the difference on this case is the barn preexisted the development, so the line-of-sight issue wasn't even a variable because the development wasn't there, so now you throw in lot 2 and 7 and that driveway, the entry being located where it is on Valentown creates a line-of-sight issue, where before that driveway wasn't there.

Mr. Nearpass – Is it a line-of-sight issue?

Mr. Marks – I can speak to that if you care to hear it? We measured sight distance for that new driveway, It's 478 toward the east and 600 feet toward High Point, but the line-of-sight is measured at 10 foot from the travel lane and that's roughly where you are sitting with your car when you are looking to make your decision and at that point given you're on the outside edge of the curb you're not on the inside interior radius the line-of-sight is not impacted by the barn.

Chairman Reinhardt – Any kind of vegetation around the barn?

Mr. Marks – There is scrub brush around the barn, yes.

Chairman Reinhardt – With that driveway being there I think then there needs to be an effort to keep that vegetation low so as not to interfere with that line-of-sight. I hear what you're saying about the line-of-sight I think that would solve the issue of the sunset. Keeping that vegetation not to interfere with the line-of-sight. Does that sound good with everyone on the board?

So, let's go through the criteria and see where we get.

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. It is a preexisting barn. There is an issue if you will with the right of way being 8.4. Again, it is preexisting, but any kind of line-of-sight issues that that proposed where the driveway is going to enter into Valentown it's going to be mitigated by keeping the vegetation as low as possible at or about the barn. Would anyone like to add anything on the first criteria?

Second, the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. Outside of razing the barn there is no other way for the applicant to pursue other than this area variance. Would anyone like to add anything on the second criteria?

Third, the requested area variance is substantial. The location of the existing barn, I think in and of itself does speak to it being substantial. Would anyone want to speak to the third criteria?

Fourth, the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This is really a location and line-of-sight issue, it has little or nothing to do with the physical or environmental conditions of the neighborhood or district. Anyone on the fourth criteria?

Fifth, the alleged difficulty I'd say it is self-created. It has a lot to do with the proposed development and really not a lot to do with the barn but still in and of itself it is self-created.

And, the only criteria that would be considered here is to keep the vegetation at or about the existing barn at a minimum so as not to interfere with any kind of line-of-sight issues on Valentown Road.

Need a motion for approval on this. Anyone want to make a motion for approval on this?

Mr. Nearpass – I'll motion for the approval.

Chairman Reinhardt – Thank you, Matt. Second?

Ms. Morley – I'll second it.

Chairman Reinhardt – Thank you, Sarah. Sorry Donna.

Any further discussion on this one?

Mr. Salsburg – Well I still sort of like the idea that we're approving this barn and another one can't be put here.

Chairman Reinhardt – We would need full board approval on it, or at least majority of it and I'm not hearing that we're going to get that.

Mr. Salsburg – I'm not hearing it either.

Chairman Reinhardt – Okay then. I appreciate your comments, but if you want to vote against it, you certainly can, it's your choice.

Any other discussion on this motion that's before us. Alright, all in favor of the motion, please say aye. (Aye)

And, opposed?

Ms. Morley – Nay.

Ms. Mitchell – I'm also against it.

Chairman Reinhardt – We have three for and two against. Motions approved. Thanks so much. Good luck to you.

MITCHELL DESIGN BUILD, Van Bortel Subaru, 6327 State Route 96 1-Z-2022

Area variance for proposed asphalt that is within the 80' of the road right-of-way where no parking is permitted per §211-32A(2)(c)[1][a].

Chairman Reinhardt – Alright, Mitchell Design, Van Bortel, 6327 State Route 96. Before you begin, I think you know that this is going to require county planning board approval, right? We'll certainly let you make your presentation and then we're going to see you back, is the county going to hear this before the 7th?

Mr. Read – No, we're aware of that.

Chairman Reinhardt – We've got to loop back again. So, we may have to ask you the same questions, but I'd rather be thorough than miss something. Go ahead.

Mr. Read – Thank you board members. My name is Spencer Read with Mitchell Design Build. Also here is Brad Humberstone with Mitchell Design Build. We are here requesting a variance on the front setback for a parking lot on some additional property that Ms. Van Bortel has acquired to the east of her main dealership property. This is the property that previously has a house that was a hair salon for many years on it. It's the last property I believe in the town before we hit Farmington, is that correct, Al?

Mr. Benedict – Correct.

Mr. Read – I think the next property to the east would be the self-storage facility in Farmington. Just so we're all on the same page. So, Ms. Van Bortel acquired this property. The existing property has a house, has a curb cut which I'll talk about in a moment and has a couple of very dilapidated ancillary structures on it. The plan is to raze all of those structures and then extent the front row of parking for the dealership along the front there and have a kind of common maintained front parking line for the site. The existing properties to the west, the main property and then the secondary property that has what we call building number 2 on it, both received a variance for this same item I believe in the early 2010 era, I can't remember exactly when that was. It received a variance of 34 feet as compared to the required 80 feet as that is the worst-case scenario of the variance all the way down on the west side of the property. You can see that in the northwest corner of the existing properties. The property line as it heads west to the property in question here kind of jogs up the right of way and appears to get smaller if I'm understanding this correctly, so our variance request here, worst case scenario is somewhere in that same kind of 34 foot area but averages out at about 41 feet because it's actually considerably deeper as it goes to the east. So, the request here is to basically continue this same variance for another 270 feet or so to the roughly 765 feet that it currently exists on the other two Van Bortel owned properties. The existing curb cut that serviced the house and the salon will be removed. The actual curb cut in the right-of-way will remain.

We've been working with DOT on the requirements around that and discussions with the planning board and the landscaping that is along the other two Van Bortel properties which is kind of a regular series of trees and bushes is proposed to be extended along this so that the entire front kind of looks like one uniform frontage. Again, we're working with the planning board and the town's landscape consultant on that currently. We will back in front of the planning board next week but also know that we have to finalize this before we can finalize anything with them. The only other thing of note that I'd like to just point out because it may help some of the discussion about criteria if and when we get to that point is that this existing site starts to taper off quite dramatically from a grade standpoint as we hit that, we'll call it the southeast corner kind of our proposed gray hatch parking lot area. Grade drops off quite significantly as it heads down to mud creek which is why additional parking is not proposed and is not planned at this point. Guess that's all I've got. I'm happy to answer any questions I can answer.

Chairman Reinhardt – Okay. Sarah, questions, concerns, comments?

Ms. Mitchell – You may have said, is that house or salon, is that coming down?

Mr. Read – Yes, so the house, there's a barn, there's a shed and there's a concrete pad are all to be removed. A lot of those are at different elevations heading down that hill. Those will all be converted. Anything that's not parking will be converted back to grass.

Ms. Mitchell – Okay. That was all I had.

Chairman Reinhardt – Donna?

Ms. Morley – That was going to be my question. Thank you.

Chairman Reinhardt – Fred?

Mr. Salsburg – No, I don't have any questions. I actually think it should be alignment with the existing property to the west.

Chairman Reinhardt – Matt?

Mr. Nearpass – It's actually good to see someone betting the supply chain issues are going to eventually come to an end.

Mr. Read – There's been a lot of discussions around that with Ms. Van Bortel.

Mr. Nearpass – Oh, I'm sure. I agree with Fred. I think it only makes sense to extend the current line we're certainly well within the character of the neighborhood as well as other variances we've granted to similar dealerships around 96. I'm okay with it.

Chairman Reinhardt – Okay, great. I think the board is probably in line with that line of thinking. Clarification when you're talking about having it align with the property is that property line going to run parallel with 96 or is it going to run more so in alignment with the current property lines in 6307 (6327) and 6319?

Mr. Read – So the north edge of our proposed parking would run continuous with call it the existing curb line of the current parking which is parallel to the property lines of the two properties to the west. So, our property line, proper on our proposed property here is what jogs but the parking would stay back of that, so it would technically be 4 or 5 feet less of a variance ask for the majority of it, because it would stay in alignment with what's on the other properties. Sorry that kind of a . . .

Chairman Reinhardt – Nope, got it. Understood. The thought I have and we can get into more detail the next time you come back is because there's been multiple variances on these parcels, for now it's one owner, but you know that it runs with the land and there's no guarantees, that at some time, hopefully never but Van Bortel may decide to carve them up again, so is to try and keep all of this in a continuous reference, so who know who's going to be here on this board, a year, 10 years what not, down the line is to create a meshed set of variances so for this particular variance should it be granted all those other variances that were granted in the past is going to be kept in this particular file. Those variances that were granted previously they'll be a notation of see variance regards to 6319, so at any point in time there's a little confusion as possible why the boards in the past and why this current board is going to do what it. Hopefully that makes sense.

Mr. Read – I understand that. I don't see any issue with that.

Chairman Reinhardt – Any further comments. Things you want to add?

Mr. Read – I don't think so, unless there's anything else I can clarify.

Chairman Reinhardt – So we will see you, what's our next date?

Ms. Reese – February 7, but the county won't be back, so it would probably be the following meeting.

Chairman Reinhardt – So we're going to have to get back to you on when the meeting after February 7th is. Okay?

Mr. Read – Okay. No problem. We'll see you again. Thanks board members, have a great night.

Board – You, too.

MTM AUTOMOTIVE, MAX VASTA, 681 Phillips Road, 2-Z-2022

Use variance to allow automotive sales at 681 Phillips Road where §211-24C(5) states retail establishments are prohibited in the Light Industrial district.

Chairman Reinhardt – Okay, next is the MTM Automotive application at 681 Phillips Road.

Mr. Vasta – Good evening. My name is Max Vasta. I have an auto repair shop at 681 Phillips Road and I'm looking to add auto sales to the property. I did have the dealer license previously, not knowing that there was a different variance with having cars for sale to the auto repair that I was already granted. I thought it was all one thing with DMV. I'm not looking to put a used car lot there. I'm looking to at the most have 2-3 cars for sale at times. Most of my sales that I do is word of mouth. I go to auctions for people. So, everything is basically sold before I even get it to the lot. I'm not looking to put 50 cars out for sale, that's not how I use my dealer license. I guess that's what I have.

Chairman Reinhardt – Okay, so let's review a little bit. The last time you were here there were four variances that were granted. This was back in May of 2020. That was for an area variance. Correct me if I'm wrong.

Mr. Vasta – Yes, sir.

Chairman Reinhardt – At any point in time, I don't want to assume anything. I understand what's happening but if it's different than what you think, then please let me know.

This application you're looking for a use variance so those are two different sets of criteria. So, for a use variance you need to satisfy all four of the criteria, that you can't realize a reasonable return, there's an alleged hardship, that the requested variance if not granted would alter the essential character of the neighborhood and whether or not the hardship is self-created. Have you had a chance to look at those criteria?

Mr. Vasta – Yes, sir.

Chairman Reinhardt – So, as I understand it this is in a light industrial area, correct?

Mr. Vasta – Correct.

Chairman Reinhardt – And currently the way the code is written that auto sales are prohibited right?

Mr. Vasta – Yes sir.

Chairman Reinhardt – As I understand it that currently you're operating the business without a CofO.

Mr. Vasta – Yes sir.

Chairman Reinhardt – And, that there's been a violation of order that's been in place, right?

Mr. Vasta – Yes sir.

Chairman Reinhardt – There's a pending court case.

Mr. Vasta – Yes.

Chairman Reinhardt – And, DMV revoked your license, the sign. Displaying the sign, Is that right?

Mr. Vasta – Yes, he revoked it due to the complaint from the town to DMV, not that if I can speak frankly that he thought it was right, but he revoked it due to the complaint from the Town of Victor. There are 2 other dealer licenses right on Phillips Road, so he thought that was very odd that mine was getting pulled, but he did what he was told to do.

Chairman Reinhardt – In my mind, the *he said, she said*. I have no idea who you're talking about or there's really no verification of the conversation that you're telling me that took place. All that I have in front of me is that the displayed DMV license, it was revoked, and you were told to take it down. Is that accurate or not?

Mr. Vasta – Yes.

Chairman Reinhardt – And, I looked back, and I remember that when you wanted the variance back in 2020 that that property you wanted to put up a pole barn and part of the rationale was that you were going to clean up that property. There wasn't going to be cars and scraps and things around. You wanted to get that into the barn and make that a more appealing looking piece of property. Or was I mistaken about that?

Mr. Vasta – Yes, sir. I am working on that. The unfortunate thing since I started, this whole covid thing has taken place and all my original quotes to build the barn changed dramatically so I moved on and a lot of things have happened that put me short. I am still on the same track. Sprinkler system is almost fully installed. Should be done before the end of the week. Most of the list of the code enforcement officer is just about complete. So, I am doing progress on the property. I am an auto repair shop, so I do have cars that are parked in the front time to time. I'm also a towing company so unfortunately at time to time I do have cars that are damaged. It's all revolving. It's not just scrap, just sitting there. I think I've done a lot of improvements on the outside. I'm looking forward to getting some warmer weather in the next few months with spring and getting back to finishing the house with new siding, putting windows and doing the roof as we speak. I am doing a lot of it myself.

Chairman Reinhardt – Who owns the property?

Mr. Vasta – My girlfriend and I.

Chairman Reinhardt – Who owns the business?

Mr. Vasta – Myself.

Chairman Reinhardt – I think you've told the board here that you are still operating that business without a CofO, is that right?

Mr. Vasta – Yes, I did. I am using not in full capacity, but I do take jobs here and there to try to pay for things. I don't have another job. This has taken a lot longer than I originally anticipated. Having the dealer license that I had at all the other locations in Victor, and I apologize I didn't realize that having a dealer license was separate from having an auto repair shop. I didn't realize that there was a different variance on that part, so I've always had it and that was the last part that I could actually still work because I don't need to be in the building to buy and sell cars, so that was one of my last things I could do and not work inside the building and that was a way for me to have money to finish the inside of the barn, the house, the outside. Though, have I don't things not exactly like I wished, yes. But I'm having a little hard time.

Chairman Reinhardt – I understand that, but have you been issued a stop work order?

Mr. Vasta – Yes, I was.

Chairman Reinhardt – When was that?

Mr. Vasta – The week after the first court date. I apologize it's been a few months since they extended that.

Chairman Reinhardt – Fair to say two months, three months?

Mr. Vasta – About two months.

Chairman Reinhardt – And, you're still working in there.

Mr. Vasta – Yes. I did go to the town and talk to Jack Marren letting him know that I am using the building and the original conversation I had with him was that he'll work with the business owners. I'm not trying to hide anything from anybody. I'm not trying not to get a CofO.

Chairman Reinhardt – I appreciate you being transparent with this board at this point, but I'm having a hard time getting around is your ask for a use variance but yet currently you don't have a CofO and you have been put on notice of a stop work order for more than a couple months. You still go back to that property, and you still operate a business.

Mr. Vasta – I don't have a stop work order. They opened the stop work order to go ahead and work on the building. They lifted the stop order.

Chairman Reinhardt – Do you have any proof of that?

Mr. Vasta – I have the emails from the code enforcement officer they are lifting the stop work orders so we can continue on working on the building.

Chairman Reinhardt – I'll hold my questions at least for this point. Matt, questions, concerns, comments?

Mr. Vasta – There is a code enforcement officer there. He should know if I still have a stop order or if it's been lifted as far as the emails, I have from Rick it said that it was lifted. He came in and looked at a few

things that he wanted to start. He looked at the trusses that were fixed, that was one of the original problems and the hurricane clips. Rick, the code enforcement officer he came into the building, and he looked that those were taken care of. He gave me a new list of things to do and as far as my understanding of the email it says lifted the stop work order so I could work on the building. Am I wrong?

Chairman Reinhardt – Al?

Mr. Benedict – As far as I know he should be able to continue working on constructing the building. He should not be working in the building on any other businesses other than constructing the building.

Mr. Vasta – And I am doing that in a very limited way. I understand I'm breaking the law or stuff, but when there's absolutely no money I either do it in the driveway or I do it inside the building.

Chairman Reinhardt – Matt, questions, concerns, comments?

Mr. Nearpass – Not necessarily questions. I certainly understand the predicament that the applicant is in. I'm in agreement with you Mike it's really tough for me to decide to do anything certainly before you've got an upcoming court date it looks like on the 20th it'd be great to have this kind of behind you so we can really talk about it. Obviously, you probably have a bit of a case for a financial hardship, and you've got the other criteria there that you're going to make a case to meet to try to do something differently to grow the business to where it is something that can be self-sustaining. Personally, I think just think you've got to get past the speed bump that's in front of you right now so that you can really operate out of that facility and then you can have the data and the evidence to show us that you may need a use variance to operate a little differently than you have in the past. Really tough for me right now to make a decision based on what I see here. So, my recommendation would be to table this and see what happens in January. See if you can get this behind you. What do you think about that? Certainly your decision.

Chairman Reinhardt – Fred?

Mr. Salsburg – I went by three times, and it was a mess each time I went by, and the last time was last Wednesday about 4:30. And, I counted eight cars, a truck it didn't look like it was in service, but it was a truck and three trailers all in the front yard and ahead of the building. I don't know what was in the six parking spots and now you're coming to expand. I don't have any confidence in you. Messiest looking place I know of.

Chairman Reinhardt – Donna, questions, concerns, comments?

Mr. Vasta – The trailers are gone. The only thing right now that's in the front parking lot is the red truck. Again, I have to work on the back parking lot that I need to get done where I have more room to not make the front look the way it is. My plans aren't to keep it the way it is, I'm not growing the business it's a license that I've had. I understand that it's not permitted there at this point but having the license isn't going to make the place look worse or better. It's just a license for me to be, it's a tool. I'm not planning on parking a whole bunch of cars there for sale that's not my plan. It's not how I use my license. I understand that the property isn't quite the prettiest thing, but I don't want to go and put something in the back yard because it's still grass, so I'm trying to not make it worse. Yes, there might be a few extras cars in the front at times. It's not always like that. It might have been when you drove by.

Mr. Salsburg – I'll say okay, show me for a while. Because the three times I went by it didn't look good. It looked like a used scrap yard to me. They were all weren't in any kind of order. I don't remember you asking to be able to use the front yard for car parking.

Mr. Vasta – For what?

Mr. Salsburg – Parking cars.

Mr. Vasta – The front yard?

Mr. Salsburg – Right in front of the house. Between the house and the road. There were of the eight cars I would say five of them were in front of the house.

Mr. Vasta – In front of the house meaning the driveway?

Mr. Salsburg – I'm not sure where the driveway starts, but they were clearly in front of the house. They weren't around the side.

Mr. Vasta – But cars in general doesn't make it look like a junkyard. I surely don't ever put any cars that get towed in that are damaged. I put those behind the fence. I am making sure that it doesn't look like a junkyard. Yes, the house isn't very appealing right now. Originally when I had the stuff granted you guys wanted 25 feet of the driveway done, I thought hey if I'm going to have the driveway done let's make it look nice all the way to the building. So have I possibly done some things not the super right way, but I thought hey if they want 25 feet of the driveway done and then the rest being stone, why don't I just spend the money and get the driveway done all the way to the barn, so it looks nice. It sure looks a lot better every time. I have my neighbors that say *gee, we watched you build a building, and the property looks great. You're doing this and everything looks great.* I have my neighbors saying it's great, but I have the town and everybody saying it looks like a junk yard. It absolutely does not look like a junk yard. It is sure not the worst looking parcel on Phillips Road unless we're just closing our eyes and looking at 681 because I ran out of money through this covid thing and everything tripled in prices and I'm just about there, but if I don't do something with my dealer license that got revoked right now it's just being held, then I lose thousands of dollars with having to reapply for all that stuff. And that's just more money I have to. Again, having a dealer license will not change at all, I'm still an auto repair shop, I do towing and I've had my dealer license at every other place that I've had. I don't know. I just don't understand. I understand I've made mistakes with how I've handled stuff, but I don't think it looks like a junk yard. Cars being parked there does not make it look like a junk yard, it's just like saying that pinnacle across the street when they have 20 busses out there and the parking lot is full that that's a junk yard. A few cars parked in the front while I'm working on the back they have to go somewhere. I can not have cars in the front when I'm still working on the side and the back parking lot.

Chairman Reinhardt – How the property currently looks I think it secondary to the primary problem of you don't have a CofO. So, let's put how the property looks on hold a little bit and focus in on the CofO issue. And, I agree with what Matt is saying is you're getting a little ahead of yourself. In order for this board to grant a use variance one of the key pieces is you need to show is called competent financial evidence. Not *I can't make it work.* That's not good enough. You have to show financials, documentation, tax returns, something that says in essence, *I can't use the property how it's being currently zoned.* Right now, you asked for a variance for that property. You wanted to run a tow truck operation in that particular location. You don't have a CofO. You really shouldn't be doing any kind of towing service, so until you get the CofO issue cleared up, you can't really run that operation for the towing operation and say *I can't make a living as a tow truck operator therefore I need to sell two or three cars to make this thing work.* So, I think that's what Matt's trying to tell you and I agree with him, you're getting way ahead of yourself. You've got to solve the CofO issue first and then say *it's not working for me* and then say *I need to sell two or three cars in a lot to really make this business click and keep my head above water.* I don't think you're there yet.

Mr. Vasta – I'm not saying anything isn't going to work. It is going to work, I just need a little more time and like I was explaining, the code enforcement officer came in and gave me a list. One of the biggest things was a sprinkler system that tripled in prices from when I got the original quote, but somehow my old landlord on the same street on Phillips Road he can get a hardship waiver and have a building that's twice the size of mine with no sprinkler system in it. But here I am asking for just a little help from my community and I have to lose something. I'm not getting something new. I've always sold cars. I sold cars at 749 Phillips Road, on Hannan Parkway, on Victor Mendon. All those places I've rented. All those places I've always had that stupid red sign, but now at 681 it's not permitted. I understand I guess I didn't read the law right and I had to pay the \$200 to get that granted. That's fine. Not a big deal, but it's kind of funny how other people somehow they can have a hardship when gee they sure shouldn't have a hardship and they can get a sprinkler system waiver and here I am paying over \$60,000 for a sprinkler system that a one person shop sure doesn't need, but it's just about installed and we're worried about a couple cars that are parked a little bit wrong while I finish this CofO problem.

It also on this thing, says there's no retail on light industrial, but it's kind of funny that down the street at 749 there's a guy with a blue light all night long flashing come and buy my flags. He's a retail person on light industrial building. How come that landlord gets to do what he wants? He can get somebody that sells flags and has a blue light flashing in the middle of the night, all night. How does that happen? Here I am I finally get to buy my own piece of property.

Chairman Reinhardt – Donna, do you have any questions, concerns, comments?

Ms. Morley – None right now.

Chairman Reinhardt – Sarah?

Ms. Mitchell – I have many, but I feel like it's just beating a dead horse at this point because I'm full agreement with both you and with Matt, that he's putting the cart before the horse. With all due respect you applied for this during Covid. So using Covid as an excuse not to be able to get your CofO, get your work done, is not an excuse.

Mr. Vasta – I'm not using it as an excuse when I got my quotes and got everything the whole Covid thing didn't start. I didn't realize that there was going to be a price change on everything that was ever built, and everybody doesn't have staff or stuff. It's a legit thing. I'm not using it as an excuse. It's a legit thing. I went from one price that tripled. Lumber that tripled. Am I making this up? Go to Home Depot, see what a2x4 cost. I'm not making an excuse because of Covid. It happened and everything tripled so it kind of put me way out over budget on everything. Will it be done and be done correctly? Absolutely.

Chairman Reinhardt – Right now if this board reviews this application they cannot, this board cannot grant the use variance tonight because you don't have the critical piece of competent financial evidence. That's a given. It's not here. As much as you say Covid, lumber's going up. Whatever those excuses, reasons that's not competent financials. Competent financial is again an example would be tax returns,

Mr. Vasta – So, Gary Pooler gave you his financials when? This is just wrong.

Chairman Reinhardt – Let me finish, please. I'll give you a chance to talk.

Mr. Vasta – I'm sorry.

Chairman Reinhardt – I understand. I'm trying to explain you don't have enough proof here for this board to even consider granting the use variance. What I'm recommending to you is you have some choices.

You can come back the next time with some as it is and look at the criteria and understand it. Because you saying I didn't understand how the law works, that's your concern, not so much ours. If you need an attorney, go get an attorney and have the attorney help you with this. It sounds like it's very important to you. If you come back without this competent financial evidence and evidence of that the hardship relating to your property in question is unique and the third and the fourth criteria the board in all likelihood is going to deny your request for the use variance for those vehicles. What I am recommending to you as Matt suggested is either we can table this, we can't table it forever or you can withdraw it. You get the CofO cleaned up, you operate your tow truck operation, you come back with financials to say, *hey I can operate my tow truck business, but I still can't make it. I need the use variance to sell two or three vehicles and here are the financials why.* That makes a lot more sense than saying *it's illegal, but.* That the end justifies the means. You really can't do that. You shouldn't be doing that.

Mr. Vasta – Okay. My question is the financial part, did the owner of 749 show you his financials to get a waiver for his sprinkler system?

Chairman Reinhardt – Right now, that's irrelevant. This is about your case.

Mr. Vasta – It sure is. It's very relevant, because you want me to come and bring you statements of financial. I'm asking just a simple question. So, the 749 landlord or whoever owns that, he had to have shown you his financials to get a waiver? Because to me it seems like and I'm not saying anything against you guys.

Mr. Nearpass – A waiver for what?

Mr. Vasta – Well at 749 there was a waiver given, a hardship waiver for sprinkler systems.

Mr. Nearpass – I'm just going to say it once, that hardship waiver is not, we're talking about a sprinkler waiver and a use variance. They are two completely different things.

Mr. Vasta – Isn't a hardship, a hardship?

Chairman Reinhardt – No.

Mr. Nearpass – No.

Chairman Reinhardt – No, it's balanced against a different set of criteria. A different set of rules.

Mr. Vasta – Right. Different set of rules. Of course.

Chairman Reinhardt – This is why I'm suggesting to you that it seems like, and I'll be quite honest with you, I have no idea how to fix an automobile, what it takes to run a business like that and if my car breaks, I go to somebody and say here this is your expertise. I'm suggesting to you that you the law can get and is complicated. If it starts to feel like I don't know which way is up, go talk to a lawyer. Invest in a lawyer and have them figure out for you the ins and outs of here's what you need to show. Here's the rules of the game. Here's that you need to do.

Mr. Vasta – Okay.

Chairman Reinhardt – You do what you want to do. It's up to you.

Mr. Nearpass – I was also looking at your past application, you didn't ask for a sprinkler waiver from what I see, right?

Mr. Vasta – No. My point is that.

Mr. Nearpass – My point is that you're getting upset with us over something that you didn't even ask us to give you and we really are, and I know it probably doesn't feel like it or sound like it, but we're trying to help the best we can and give you some guidance and some options. There are some real options for you that don't end badly here and unfortunately it takes time to pass through the gates, but the biggest challenge I see right now is even if you got the use variance, you still don't have a building you can operate in. You got to get the CofO behind you. I just don't know of a board on earth that would approve of a use variance in a building that can't be used. Right? Put yourself in our shoes.

Mr. Vasta – I understand that. But I'm trying to retain my license.

Mr. Nearpass – So what does your timeline look like?

Mr. Vasta – Basically, in a week or two they are not going to hold my stuff anymore and then I have to reapply to them and there goes \$3,000 that I have invested just in that part that I'll have to respond it all over again.

Mr. Nearpass – I wish I had better advice. At the end of the day, you can try to work something out with them, but you got to get what's in front of you right now, behind you to really take the next step.

Mr. Vasta – The question on the sprinkler system that I didn't even bother asking you guys is that I was told that if you don't put that in, you're not going to get a CofO period. So, it was almost like.

Mr. Nearpass – I don't have anything that says that. I didn't tell you that. This board didn't tell you that.

Mr. Vasta – You didn't, but some of the people in the town kind of do and

Mr. Nearpass – We get a lot of sprinkler requests and to be honest, maybe it's 50/50, I don't know what it is, but they are tough to get, a waiver for sprinklers. For sure. Safety of first responders going into buildings, but it does happen. There are certain circumstances, and every applicant is different and unique. I thought it was a little unfair to go after us on the sprinkler waiver when you didn't ask for one. The fire marshal gave the okay for the setbacks for the driveway and all of that. At the time you said you were okay with the sprinkler requirement. Now I'm with you, I was also trying to build a small house and Covid made the price of that house be unaffordable for me, so things they're on hold and when you saw those prices triple, maybe you should have come back in front of the board with that kind of evidence, but you just can't come in front of us and tell us because you didn't ask for something we should have given it to you.

Mr. Vasta – That was just me making a point that. It doesn't matter.

Mr. Nearpass – We want to work with you here. We're trying to do what we can.

Mr. Vasta – I had the fire marshal come to inspect the building. Let him in, I've never said no to anybody to come in and look at what I'm doing. I talked to him. I've seen him plenty of times. The day after he comes in and says he wants to talk to me and says my name and said it's me, I talked to you yesterday. Absolutely argues with me that I wasn't the person yesterday that he talked to. So, there's so many things that I'm just frustrated about that it's just not right. Also, I'm renting from the person down the street,

because I've been on the street my whole, many years and my landlord says gee the fire marshal says that I better watch out for you because every where you go you set a fire. And, I'm like I never called the fire department once, do you see where I'm coming from as far as being frustrated on how things are just not right?

Mr. Nearpass – I understand your frustration. We're trying to do what we can here and provide some guidance and to give you some time to get some of that stuff behind you and then come back in front of us so that you have a shot at getting the answer that you want.

Mr. Vasta – Okay so do I see what the court thing is going to do in two days?

Chairman Reinhardt – We can't tell you what to do.

Mr. Vasta – No, I mean do I table it until.

Chairman Reinhardt – You have some choices here on what to do. You can say I'm ready right now, the board go ahead, make a decision on the use variance.

Mr. Vasta – You're obviously going to say no.

Chairman Reinhardt – I think that's a pretty safe bet, so I think you're telling us that's not the way you want to go. You could also say, I'd like to table this and give another chance here of producing some financial evidence that shows why I can't run that business as a tow truck operation like you planned on in the first place and you need a use variance to see two or three cars or

Mr. Vasta – Can I just stop you for a second?

Chairman Reinhardt – Let me finish. And, then because there's really three choices. And, I'm going to tell you choice number two there are consequences on tabling this because it can't last ad infinitum because it will be a negative result for you, and it would be as if this board denied the use variance and you're going to be precluded from reapplying for a use variance for a while. Door number three, you withdraw it and when you presumably get the CofO cleaned up, might be a week, two weeks, whatever the time is then you can reapply and say *hey, now I got the CofO cleaned up, I'm running the tow truck operation. I still can't make it. I need to sell cars there. Here's why, here's the financial proof.* Those are the three choices that I see.

Mr. Vasta – The only thing that I want you to understand is that I've always had my dealer license so it's not like, it's always been part of me, it's not like I'm just applying because I can't do it with the towing. It's always been. Okay.

Mr. Nearpass – Look it. Mike's given you the options and I highly recommend that you seek counsel and someone who's gone through a use variance before. They will be able to help you and guide you and help you put a package together that we're kind of used to seeing for something like this. I understand that you've always had it and great, maybe what you then have to show is this part of the business has always been, I don't know, 50% of my revenue, 25% of my revenue. I can't operate without it. Maybe you've got to show the past and how much of your business that particular license was to your income and take it from that angle, but I highly recommend, obviously Mike talked about the options, but finding counsel, finding someone who can help steer you through it. A use variance is not easy. It's very rare that I think we have someone that just comes in on their own and wings it and gets a use variance. We only see maybe 3 a year, they're tough.

Chairman Reinhardt – And, to his point, you don't have to decide if you wanted to withdraw, you can talk to an attorney and the attorney might say tomorrow, or whatever the case is and the attorney might say *holy cow, you really should be doing XYZ*. You can call the town and say I want to withdraw, I want to continue, I want another date, I'm going to bring my financials, but it really, to Matt's point and I agree it's sounds like there's a lot of things that are swirling around and it does sound like you're frustrated and if you get some solid advice on which direction to go it might help you in the long run.

Mr. Vasta – Just one more thing. So, it doesn't matter that there are dealer licenses, right? On the street. There's literally seven of them in light industrial right within a mile.

Mr. Nearpass – That may help your case when you come in front of us with a whole package. Because we hear it from you right now, we can't just hold a vote and say hey the applicant said there are seven of them down the street, let's just give him one, right? I would say that that probably helps your case if you can show there's people in the same district that have the same type of operation and use. It probably helps your probability of success on that. It just has to be part of a comprehensive package and not just a hey I'm pulling this out of my back pocket and here's seven business that have them. I think it's great information and great data. And, it would be something that if I saw that in an application would support granting versus being the only one or being the first for something that is specifically prohibited.

Mr. Vasta – But, that's why I did put not a specific address number, but I did put where they were I figured putting those on there like, she said she drove by and she didn't like the way it looked, or he said, I apologize, that was going to get looked into. So do I have to decide something tonight as far as what's the difference between tabling it and just.

Chairman Reinhardt – For now if you want to table it, sleep on it and if you decide if you want to withdraw it tomorrow morning, call us up. If you want to talk with an attorney. It might not be a bad idea and let us know I want to consult with an attorney, and you'll keep in touch with us. You need some guidance here. It's a big ask and as Matt said use variances are hard to come by, so.

Mr. Vasta – Okay. Thank you for all your time, guys.

Chairman Reinhardt – Okay have a good night.

Mr. Vasta – You, too. Take care.

Chairman Reinhardt – Sir (to the audience) you're sitting patiently out there, you just observing?

Audience – Yes, all set.

The board discussed the possibility of moving the Zoning Board of Appeals meeting dates to the third Monday instead of the first on those months that there is only one meeting, to better coincide with the county planning board meetings.

The board discussed various structures for the code officer to look into.

Town Board member and ZBA liaison Drew Cusimano addressed the board with an overview of town board business.

On a motion by Fred Salsburg, seconded by Donna Morley, the meeting was adjourned at 8:37pm.