

TOWN OF VICTOR ZONING BOARD OF APPEALS, April 4, 2022, 2022

A regular meeting of the Town of Victor Zoning Board of Appeals was held on April , 2022, at 7:00 p.m.

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

OTHERS: Wendy Santmyer, Roger Klaus, Chad Johnson, Al Benedict, Adam Ryczek, Town of Victor code enforcement; Suzy Mandrino, Town of Victor; Amber Downs, ZBA secretary

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

PLEDGE OF ALLEGIANCE

Chairman Reinhardt welcomed everyone. 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 Donna Morley:

RESOLVED, that the minutes of the meeting held on March 7, 2022, BE APPROVED.

Adopted: Ayes 5, Nays 0

PUBLIC HEARING

Chairman Reinhardt- Alright, First, Kassis, is that how its pronounced? No? Yea, come on up. How do you pronounce it?

Ms. Cassiris: No, Kassis

Chairman Reinhardt- Alright then.

Ms. Cassiris- So, KA-SEIS. I'm Christina Cassiris. I am here on behave of, the applicant is Jamie Bracey, he works with us in our office, I'm on his behave and the behave of Kohls/Sephora. We are requesting for an area variance to add Sephora signage onto the building where Kohls is currently at. Thie sign is 32.32 square feet, 24 inches tall and it illuminates at night, it'll be at the side entrance to Sephora, I mean to Kohls within Kohls.

Chairman Reinhardt- When you are done, just let me know

Ms. Cassiris- All done.

Chairman Reinhardt- Okay great, so, you are aware the code requires or at prohibits what you are asking for is putting another sign that specifically a particular brand name in addition to the Kohls sign, have you looked at the criteria do you understand that to grant a variance that the, not everyone of the criteria is met but it's a balancing test if you will, so, have you given that any thought about why your company is

asking for a variance and why it should be granted?

Ms. Cassiris- So, the reason why we're doing this is because, so Kohls and Sephora are collaborating their brand together across the whole entire country, they're not just doing this here. They are basically doing the same thing that was at JC Penny's that you know, JC Penny basically has been doing away with because they are downsizing, bankruptcy, all that's stuff. So, what Kohls and Sephora partnered together and that's why they are doing something that, it is a little different, it's so that people know that Sephora is within Kohls.

Chairman Reinhardt- So let me ask you this, let's take Dick's for an example, Adidas and Nike and Converse and all the other, I'm sure I'm missing a lot, why shouldn't, if Dick's comes in and asks, hey we want Adidas and Nike and all those other brand names plastered all over the side of Dicks, what's the difference between the two? Or are they the same?

Ms. Cassiris- I understand, I believe, well we feel that is a little bit different, they are not putting, you don't have Dick's Sporting Goods/Adidas and you're not going to be able to do that because everything is within their store. You know that that's what they sell when you walk in the door, they sell Carhart, they sell everything, and that's why they advertise it sometimes in their windows, you know as whatever season comes in but in this case it's going to be permanent, they're not just going to be like moving out in the next future they're trying to make a deal where they are together as partners.

Chairman Reinhardt- Is this going to be a forever long term that Kohls and

Ms. Cassiris- They hope so, yes.

Chairman Reinhardt- so you're asking then for the two names to be on the side of that building for as long as Kohls and Sephora exist?

Ms. Cassiris- mmhm.

Chairman Reinhardt- okay, and when I say okay, I don't mean that its okay or that I'm agreeing with the sign.

Ms. Cassiris- I understand, yea.

Chairman Reinhardt- alright, I'd like to ask the board if they have any questions, Sarah questions?

Ms. Mitchell- uh, no I don't really have questions, is Sephora moving from the mall to this location?

Ms. Cassiris- I do not know that I assume they might

Ms. Mitchell- because there wasn't a sign at Sephora on the exterior of the mall, so justification as to why it needs to be at Kohls.

Ms. Cassiris- How far is? I'm not familiar with that,

Ms. Mitchell- No, there was no exterior sign.

Ms. Cassiris- No, but is it far from the mall to this Kohls?

Ms. Mitchell- No

Ms. Cassiris- I do not know that, That is a good question, I don't know if they have the man power, I think that what they're doing is, Kohls employees are going to be people who are going to be working in the Sephora department because what its going to be is an all opened, you can walk, I don't know if you've been to one that's inside of JC Penny that had Sephora that you walk through JC Penny from another exit or entrance and then you walk through and you're in Sephora, you can pick up whatever you want, buy whatever you want and then keep walking through the store if you want to keep buying stuff from JC Penny and this is the same case as Kohls.

Mr. Mitchell- I don't really have any thing else, don't necessarily think that that justifies the need for an additional sign, I agree with you Mike because in that same plaza there's Walmart and AT&T and they could turn around and come back to us and say I would like to put iPhone on my sign with AT&T, well how do we justify that they can't do that then? Though I'm not, the way this application is presented as well as there really isn't support in my eyes for it, I wouldn't support this the way it is presented. But that's all I have.

Chairman Reinhardt- Donna questions/comments?

Ms. Morley- Where is it that you want to put the sign?

Ms. Cassiris- So if you are, this is the, to the right of the main entrance, so if you're looking at Kohls the letters in Kohls its going to be to the right so over their entrance, their entrance is, I believe it's already painted black and white like that.

Ms. Morley- okay

Ms. Cassiris- and then the small, sorry

Ms. Morley- and JC Penny does not have those? Have never had those? The store has been there a while.

Ms. Cassiris- I don't think that they did, Sephora was very, very well, marketed with JC Penny in that time, so that's why they're doing this this way now.

Ms. Morley- okay, I'm in agreeance with Sarah and Mike.

Chairman Reinhardt- okay, Matt.

Mr. Nearpass- I'm in the same boat, this is a tough one right, it's, they didn't acquire Sephora, it's a partnership much like Best Buy would spin that they have a partnership with Sharp for TVs or Panasonic or somebody like that, the signs, as I'm looking at the sign plan here, its more than just putting up one sign, right, its adding that sign, plus its adding Sephora to the larger Kohls sign as well as the sign, the monument sign out by the road, I just think, as is again, unless there's some other evidence that you bring forth, its really just a hey, we have a partnership with a company we'd like to put them on our sign, can we have a slightly larger sign and mention them there and its just very explicitly not allowed per the code again unless we have, unless the application has something unique about it, other than just a partnership. I'm not, if there's anything you want to add to it, I'm opened to it but at this point I just don't see why everybody else wouldn't do something similar, in an opportunity to try to grab more square footage for their signs and to get more out there like that, I don't really see anything unique about this.

Ms. Cassiris- I understand, I think that what they're trying to really do is to obviously bring more

business, I could ask, go back and ask Sephora if and Kohls if they're going to have that other store closed in the mall and that's why they're doing this because they want to have people to come into that specific area because that's where they're store is going to be.

Mr. Nearpass- sure I know I get it, its, but at the end of the day the relationship Kohls has with Sephora is still similar as the example I used with best buy and Panasonic, right? They sell their TVs, they've got their employees in there selling TVs they've got a Panasonic section, you know, within the store and you could very easily also be up here, right? Pitching the same thing to Best Buy and I don't think it would have been anything different about it. If it was, I don't know, I don't want to go into hypotheticals but there's, if there was something more unique about it, I think it would, you know it might meet the bar but I just don't think it meets the bar, whether or not its in the mall or not, it's really just two different company's and ones maybe leasing some space from the other or there's some synergy of both of them coming together, right? And utilizing there staff to sell their product, but I just don't see how in this situation there's really anything unique about it other than, I see why they would want it up there, if I was Sephora I would want, you know my name out there as much as possible but if Sephora in my opinion, you can tell them this I guess, Sephora wants their name on the wall then, they can lease the space next door or something to be able to have the privilege of having that because that's the only thing I can think of. Again unless there's something unique about it.

Ms. Cassiris- okay

Chairman Reinhardt- okay, any questions/comments.

Mr. Salsburg- I think it makes it look like there's two stores. If Kohls wants to sell Sephora its up to them to inform the public, It doesn't look good to me.

Chairman Reinhardt- yea, I think, the message the board is trying to deliver is if this was a re-brand, if these two companies were merging it might be a different story but as the board I think has pointed out in different ways this is a separate organization coming in trying to get more advertising for the whatever it is that your selling like inside of Kohls, these are not one in the same companies, they're two separate companies, is that fair to say? Its not a merge?

Ms. Cassiris- Its similar to a merge, but they're, they're not leasing, they're not paying for their leasing in the store, as I know of. So I think they're like basically like merging but they're not paying

Chairman Reinhardt- I need, we're going to need a clear answer. If it's a merge that might put a different tone on this thing, if this are two separate companies, run by two separate organizations, that's a different issue, so I think what's happening here also is this has to be referred to the county planning board, so are you familiar with that process?

Ms. Cassiris- no

Chairman Reinhardt- Alright, so, because the location of it, the county planning board pursue to the laws is required to give Victor their opinion on what they think is happening here especially with the signage, if they decide that they want to take no action to it the board can pretty much do whatever it wants, if they give us an opinion asking us to take certain kinds of action then we would need a super majority.

Ms. Cassiris- okay

Chairman Reinhardt- so without knowing what they're going to do, its kind of hard to predict, so you're going to have some time, County planning board is when?

Ms. Downs- The 13<sup>th</sup>

Chairman Reinhardt- okay, so the 13<sup>th</sup> of April, so when we meet again April 18<sup>th</sup>, we should have their decision, you'll have their decision to take a look at, you'll certainly have another opportunity to comment, I would suggest that you go back to Kohls and Sephora and let them know how this board is lets say leaning and thinking and get a clear answer, Is this a merge?

Ms. Cassiris- okay

Chairman Reinhardt- if these are two separate companies, is what appears to happen is happening here is Sephora is really just looking for more advertising space. Right, on the frontage.

Ms. Cassiris- okay.

Chairman Reinhardt- Alright, questions for us?

Ms. Cassiris- I'm sorry you said what date was that next meeting for here?

Chairman Reinhardt- The 18<sup>th</sup>.

Ms. Cassiris- The 18<sup>th</sup>, okay.

Chairman Reinhardt- Alright, so 2 weeks from today.

Ms. Cassiris- okay, and we don't have to do anything, we just have to come back? Right, we don't have to submit anything else.

Chairman Reinhardt- If you want to you can, you don't have to.

Ms. Cassiris- okay

Chairman Reinhardt\_ Theres's applicants have come multiple times because we have, we're trying to find out more information.

Ms. Cassiris- mhm

Chairman Reinhardt- It's really up to the applicant to provide this board with as much information as possible, so that we can render a decision. And the board often times gives the applicant hints and clues to see if you can give us this maybe we can take a look at this a little bit differently but as it stands right now, I don't think the board would rule in your favor. So, you have another chance, go get some more information for us, see what the county planning board does. And we'll see you in a couple weeks, okay?

Ms. Cassiris- Alright, perfect, thank you guys.

Chairman Reinhardt- Wait before you, anybody from the public want to speak for or against the application? No, okay.

Ms. Cassiris- Thanks you

Chairman Reinhardt- We'll see you in a couple weeks, thanks so much.

Chairman Reinhardt- Wendy, are you Wendy?

Ms. Santmyer- I guess.

Chairman Reinhardt- You guess?

Ms. Santmyer- I'm the only girl left in the room.

Mr. Salsburg- Well I don't know about that.

(Laughter)

Ms. Santmyer- Hello, I am Wendy Santmyer live at 1520 Cranberry Pond Trail, so I guess we'll start with I built a house that was a long nightmare-ish process but finally I'm done. And I'm here because I need to get a variance for the house since it went into the 40-foot setback. I brought pictures, I don't know, so you can actually see if you'd like me to bring these up. Or no?

Chairman Reinhardt-Sure if you want to submit them. Can we have them?

Ms. Santmyer- Sure, you can have them. I don't know if it would help to see things in color and not on a site plan, helps us a little bit when we're talking about.

Chairman Reinhardt- Okay these, we don't have these.

Ms. Santmyer-No, I just took them today, I thought it would help.

Chairman Reinhardt- So, on the back, lets do this, the one that has the, our sign, under review, I'm going to mark as Exhibit A put today's date on it and the one that doesn't have the sign on it, that's going to be exhibit B with today's date on it. And you have circled what I'm presuming is the corner of the house that is encroaching on the front setback, and you need 8 inches, is that the substance of it?

Ms. Santmyer- That's the just of it, that's it.

Chairman Reinhardt- So, as you if you want to make your case, more details

Ms. Santmyer- well I'll just say it doesn't change much of the look of the neighborhood, I know, it doesn't change much, besides it went into a corner and I'm going to say that I blame the contractor who did the site work as I, we've staked it out many times and I don't how it got changed, and what happened but unfortunately it did. And I'm looking to get a variance to get it approved that its okay that it's sitting there.

Chairman Reinhardt- When was the house built?

Ms. Santmyer- I just moved in 4 weeks ago.

Chairman Reinhardt- you closed 4 weeks ago, right?

Ms. Santmyer- right.

Chairman Reinhardt- and the construction was from when to when, approximately?

Ms. Santmyer- From March of last year until, it was a long painful, over budget.

Ms. Morley- Covid

Mr. Salsburg- sounds like my house.

(Laughter)

Ms. Santmyer- this just was the icing to the cake, when it came out for the survey and it wasn't in the right spot.

Chairman Reinhardt- Alright, so, I know, it sounds like you don't want to push anybody in front of the bus, why did this happen, you don't know.

Ms. Santmyer- no, I don't know.

Chairman Reinhardt- Alright so you hire a contractor.

Ms. Santmyer- I hired a contractor, he did all the building of the house (pointing the direction of man sitting in the audience) of the framing and everything else he didn't do the foundation part of it but...

Chairman Reinhardt- Alright, tell us who you are.

Mr. Johnson- I'm Chuck Johnson, Black Label Builders, we came in after the house foundation was under way.

Ms. Santmyer- the foundation was a mess

Mr. Johnson- the foundation was a mess but the site was like constant mud, it was kind of rainy season, I'm not making up excuses after the last guy but I can kind of see how maybe some grade stakes got kind of tipped a little bit and if you look at the map and the way the road is and the way the house is, its like a slight kind of, almost pie, it's like 8" on the long side and probably literally has 2 feet, 2 foot by you know, 8" pie. Literally probably nobody knew until they came out and really put the pins in the ground and started pulling the, you know all the measurements for the final time.

Chairman Reinhardt- You know, were you part of the original survey, the process?

Mr. Johnson- no, nope. I, when I showed up I was just supposed to the framer, but we ended up picking up the rest of the job and seeing it through to the end. Though the foundation and everything was already set and she's in litigation with all

Chairman Reinhardt- Okay that helps, so you changed contractors?

Ms. Santmyer- oh yeah, yes.

Mr. Johnson- yes.

Ms. Santmyer- yea, these a big litigation with the gentlemen that did my foundation and I'll decide where it goes, I've actually hired an attorney and so,

Mr. Johnson- So when we came in, we tried to make fit and move on rather than try to go backwards, and

that's what we did, so we had to kind of use what was there and we did and like this, like she said, it was kind of the icing on the cake where its like oh, you got the CO and here's the final, you know..

Ms. Santmyer- instrument survey and there you go, you're into your setback.

Chairman Reinhardt- okay, alright, understood. Matt questions?

Mr. Nearpass- are we really only talking about 8" here?

Chairman Reinhardt-right

Mr. Nearpass- No questions

Mr. Johnson- and if you look how the road comes and the house sits, I think they tried to line up on the pond.

Mr. Nearpass- I, I'm with you, I'm on the side of, were only talking about 8 inches here against a 40' setback somebody made a mistake, I mean my perspective I don't really care who made the mistake, I mean there's also estimating sometimes people come out they eyeball things these snow on the ground you don't really know where the, there's a lot of variables that come into play and this is probably the least controversial application I've had in front of me in 15 years so.

Chairman Reinhardt- well were, were just trying to, we're creating a record and that's what were trying to flush out and I'm not going to pick on Adm but you've had building experience, things happen mud shifts, you have, anybody could lean on a stake, a bulldozer hits it a little bit and clips it 8 inches, there's a whole host of reasons.

Ms. Santmyer- I tried to keep replacing the stakes with metal stakes but that didn't help either, they'd just drive over those too, so

Chairman Reinhardt- we're just trying to create that good record so that when we do decide, we have something to go on.

Ms. Santmyer- sure

Chairman Reinhardt- Donna, questions/comments?

Ms. Morley- none, it's all good

Chairman Reinhardt- Sarah? Questions. Comments?

Ms. Mitchell- I have nothing either.

Chairman Reinhardt- Fred?

Mr. Salsburg- 8 inch in a corner on that great big place, close enough.

Ms. Santmyer- (looking into audience) Roger? Are you okay?

Mr. Klaus- (from the audience) do I need to go up there?

Chairman Reinhardt- If you want to say something. You came all this way.

Ms. Santmyer- I mean Roger was there through the whole project.

Mr. Klaus- I live on 1507, right at the corner on the entrance, I was at the site every morning watching these, can I say these guys were clowns. That's probably the nicest thing I could say about them. If they were that close, I would be surprised. So that's basically, they did an amazing job that they got that close, so that's all I got to say.

Chairman Reinhardt- alright so you're, as far as when we ask for the public for or against?

Mr. Klaus- I am for granting the variance. Yea.

Chairman Reinhardt- Got it, did we get his address?

Mr. Klaus- 1507.

Ms. Downs- and that's cranberry pond trail

Mr. Klaus- right at the corner yea,

Chairman Reinhardt- thank you, alright, Adam anything else you want to suggest say, Al?

Mr. Benedict- um, I'll just say that when we go out there to do the footer inspection we have the site plan we know what the setback is supposed to be we try to unfortunately estimate where, we don't put down a tape measure, we try to estimate where the right away line is and then pace it off, as they said, I'll verify stakes get run over they get pulled out, thrown aside, re-inserted. It's, I mean were not surveyors, when we go out to do it, so it does happen occasionally, I mean this is probably 3<sup>rd</sup> or 4<sup>th</sup> one I've seen so far since I've been here in 20 years.

Mr. Johnson- the site was constant mud the whole time.

Chairman Reinhardt- okay alright.

Ms. Santmyer- Oh, I didn't know she was way over there, she's hiding over there.

Chairman Reinhardt- we know she's there. Alright, lets run through the criteria, first an undesirable change would not be produced in the character of the neighborhood or determinate to near by properties created by the granting of the area variance. Common theme I think for all of these criteria is going to be were talking about 8" and were talking about an unintentional error by a prior contractor that the applicant had to deal, the applicant had to deal with a build that has been ongoing for approx. a year sounds like there's been a lot of headaches, so 8" as Fred has also pointed out in a large parcel of property is relatively minor and not substantial, would anyone like to anything else to the first criteria?

Second, the benefits sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance. Again 8", the only thing that could be done I suppose is to pick up the house and move it and move it and that's just not feasible. Would anyone like to add anything to the second criteria?

Third, as previously stated were talking about an 8" variance it is not substantial. I don't think there's anything more that needs to be said about that. Would anyone like to add anything to the third criteria?

Fourth, the proposed variance will not have an adverse effect or impact on the physical environmental conditions in the neighborhood or district. 8 inches is not going to create any kind of physical or environmental conditions in the neighborhood or district. Anyone like to add anything to the fourth criteria?

Fifth, the alleged difficulty is self-created, albeit not by the homeowner but the homeowner's contractors. But that doesn't necessarily mean that the variance can't be granted. Would anyone like to add anything to the fifth criteria? Or anything else? Alright, hearing none, does anyone entertain any conditions to this, I would think not, okay I don't hear anything else. We have 1 neighbor that has observed and also seemingly is indicating that it was a bit of a tough show for her in the beginning as far as the contractors go and luckily got the ship righted. So, 1 for the applicant. Anything else to be added? Alright, I would entertain a motion for approval.

On a motion made by Matt Nearpass seconded by Fred Salsburg the application was approved.

All in favor 5 ayes

Any opposed 0 nays

Chairman Reinhardt- Thank you, good luck, hope you enjoy your home, thanks for your patience.

Ms. Morley- welcome to Victor.

Chairman Reinhardt- Very good, would anyone like to add or discuss anything before we entertain a motion for adjournment?

Mr. Salsburg- what happened to the shed application that was withdrawn, will that be back? Or is it settled?

Ms. Downs- I never received payment

Chairman Reinhardt- yea, the shed it was on last week.

Mr. Salsburg- he didn't pay his application fee, it got pulled.

Ms. Downs- he may be back, I believe he's going to planning board but I'm not sure.

Mr. Benedict- there are some detail that need to be hashed out, because he did show up and I spoke with him, he needs to send his information in, I haven't seen it so...

Chairman Reinhardt- okay

Mr. Benedict- we'll have to hash that out tomorrow but presumably he'll be back if not next meeting, the meeting after. If he gets everything in.

Chairman Reinhardt- the, whatever those garage units on Dryer, did you get a chance to look at those or?  
Mr. Ryczek- yea, so I sent a letter to that address as well as an address down the street that Al had passed

on to me, it's been more than enough time without response so notices of violation will be going out, they are on my desk, its just the work flow got heavy real quick here in the past week and a half so...

Chairman Reinhardt- have you had a chance to look at it?

Mr. Ryczek- yea, so I have, it seems like the quantity is more than even the satellite views but I went out and they seem permanent even though they're temporary style structure. He has them on bases and also looks like there may be some activities as far as a business going on in that lot as well. It opened the can up, get it going.

Chairman Reinhardt- Yea, lets take a look at it.

Mr. Salsburg- is that an application, in for us?

Chairman Reinhardt- no I think, its under investigation, is that a fair way to put it?

Mr. Salsburg- by us?

Chairman Reinhardt- well not this board, but code enforcement, yea. We had asked Al a few weeks ago to take a peek at it. And then Adam's now taking over and as you've heard he's looking into it, sent a letter out to him and see if we can get a response.

Mr. Benedict- we have to give people a certain amount of time to respond we can't just, we can't just do it tomorrow or else, so...

Mr. Ryczek- so I, those were some of the first letters that I sent out personally of that type and I did not put a time frame on the letter, my original draft, its been probably twice the amount of time we normally allow. So, then I'm going to move forward because we've received no contact. With the notice of violation and then see if that brings him in.

Chairman Reinhardt- sounds good, anything else from anyone.

Mr. Nearpass- yea, I saw Highpoint has put up a new Monument Sign with big slots for tenants is that, obviously it must have been allowed per their district?

Mr. Benedict- I believe that was approved through the planning board.

Mr. Ryczek- yea, that went back and was a part of that, I just closed out that permit, it had already been approved and from a while ago from what I understand. Finally got them in, and I went out checked them.

Mr. Benedict- that was all PDD, which has its own regulations, so it doesn't necessarily follow zoning codes or the sign codes in this case.

Mr. Nearpass- and we were flowing, was the fence that was going though the conservation easement, is that?

Ms. Downs- Korman?

Chairman Reinhardt- No, that's in litigation and we're going to maybe re-visit that a little bit, it's in progress, nothing for us to do just yet.

Mr. Benedict- yes.

Mr. Nearpass- oaky, fair enough.

Chairman Reinhardt- okay, anything else? We're good? We're good? Alright, motion to adjourn.

On a motion made by Mike Reinhardt and seconded by Matt Nearpass the meeting was adjourned at 7:34pm.

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