

A regular meeting of the Town of Victor Zoning Board of Appeals was held on April 5, 2021 at 7:00 p.m. There was no public gathering based on the recommended precautions for limiting exposure to COVID-19. The following members were present virtually via ZOOM and the meeting was live streamed via YouTube:

PRESENT: Michael Reinhardt, Chairman; Donna Morley; Fred Salsburg; Sarah Mitchell

ABSENT: Mathew Nearpass, Vice-Chairman

OTHERS: Linda and Tim Robins, 630 Burke Hollow; Paul Colucci, The DiMarco Group; Emily Chen, Brooks & Harlow Salon; Ginny Schaeffer and Jen Egger, United Refining Company; Al Benedict, Town of Victor code enforcement; Suzy Mandrino, Town of Victor; Kim Reese, ZBA secretary

Chairman Reinhardt called the April 5, 2021 Zoning Board of Appeals meeting to order at 7:00pm.

PLEDGE OF ALLEGIANCE

PAST MINUTES:

On motion of Donna Morley, seconded by Fred Salsburg:

RESOLVED, that the minutes of the meeting held on March 1, 2021 BE APPROVED.

Adopted: Ayes 4, Nays 0

Chairman Reinhardt – We do have two return applications and one new. Ginny, you're for Kwik Fill?

Ginny Schaeffer – Yes.

Chairman Reinhardt – Okay, so I think you know the drill, but basically we're going to hear the application, take your time, there's new things certainly let us know and the board will ask some questions, but at least on yours if I'm not mistaken, this is going to have to go to the county planning board for comments. Did that go, Kim?

Ms. Reese – It did go, yes.

PUBLIC HEARING:

ROBINS PERGOLA AREA VARIANCE – 05-Z-2021

Linda Robins, 630 Burke Hollow, is requesting an area variance to the set-back to construct a pergola, whereas per Schedule II, Area and Height Requirements, of Chapter 211 of the Town of Victor Code, a 15' setback is required. The property is zoned Residential 2 and owned by the applicant.

Chairman Reinhardt – So, let's start with the first one is going to be the Robins pergola application. Hi Linda, how are you?

Mrs. Robins – I'm great. How are you guys?

Chairman Reinhardt – Good. I want to thank you for sending those pictures and it was very helpful.

Mrs. Robins – Good. Well the weather cooperated, at least.

Chairman Reinhardt – Good. I just want to make sure that as we're going through this that I understand what's happening here with your photographs. As I'm looking at them, there is a giant rectangle. I'll call it a giant rectangle, behind the house. That's the proposed pool, right?

Mrs. Robins – Yeah, if you want. I kind of numbered all of them, but the first one is kind of a general overall schematic of the pool and the proposed pergola area. And, I thought that would be good reference point to start. I don't know if everybody there has those?

Chairman Reinhardt – I'm looking at the dropbox, there we go. I think Suzy is going to share the photos, okay. So, we're seeing the aerial. What is this one? Go back. I like the photographs and then you have some red markings. So, what are we looking at here?

Mrs. Robins – So the red marking there is the pool, as the pool contractor has sent us the drawing and I went out. We measured it out and actually, it was interesting where he had already painted it before the snow, the paint was still barely visible so I just kind of repainted it, so that you could see it. So that's as the pool contractor had laid it out to begin with.

Mr. Robins – And, just as a reminder that where the pool is sitting, that's as far west as we can get the pool because of the existing leach field.

Mrs. Robins – So, then you had gone to another photo. So this photo is of our house, you can see the window there in the foreground there. And, you can kind of still see the black area, there. I should have highlighted that. I don't think I knew how to do it at that point. So you see that there's nothing in the sight line that's the neighboring property to the back and to the left. You can see that there's like red bud trees in the back of our property. So that's just from the house looking at the pool.

And, there's the overall schematic of the project plan if you will. The area there to pay attention to are those steps that are going up to that area. You'll see the grade is marked there. I believe it's 42 inches, plus or minus there.

(inaudible)

Yes, right there. So that's 42 inches, right there, high. That is a natural and existing grade that when we originally spoke with the pool contractor we met with a couple of them and they all had that concern. That you needed to, you wanted to work with what you had and maintain the grade that you have. So we need to put a retaining wall there. And, I think that's where some of the question came last time and you'll see it.

Here's a picture of a temporary fence we had put up and those flags kind of are there to give you a visual representation of the rise in that gradient.

Mr. Robins – So each of these flags at 6 inches into the ground just to give you a good view on how you can see the grade going up to the side of the property.

Mrs. Robins – And, again, you can see past this whole space that there's no neighbors that are going to see this. And, those are the steps.

Chairman Reinhardt – And, those are the, I was wondering what that was. At first I thought it was the pergola and you're telling me where the steps are.

Mrs. Robins – That would be enough for me to sit in, but not him. (laughter)

Chairman Reinhardt – Got it. This makes far more sense. Those are the steps going up to the proposed pergola area, right?

Mrs. Robins – And, so the front edge of that there is the retaining wall and there will be a surface patio there just so you know. Regardless of anything, because it makes sense to put one there if you've got a wall there.

And there's an overview of the whole, it's not going to be that big, either, so that's a little extreme, but that's the area that we are talking about in red.

Chairman Reinhardt – The area in red represents what?

Mrs. Robins – That's where the pergola would be, although it's bigger than that, I mean it's not as big. It's a big circle to show you that's the proposed area in general.

Chairman Reinhardt – So the fence that we see there with the post what does that represent?

Mrs. Robins – The fence that you actually, oh, that is a temporary fence so that. It's just a temporary fence for our dog at this point.

Chairman Reinhardt – Alright so it's not part of this application.

Mrs. Robins – No.

Chairman Reinhardt – Alright, got it.

Mrs. Robins – And, there it is again from the back view of the house looking directly at the house.

Chairman Reinhardt – Okay. Great.

Mrs. Robins – So, that's how you'll see it right there. The one thing that's a little misleading in that picture, when the pool designer did it, that fence there is not going to be a solid white fence like that. It's going to be kind of like an iron look, aluminum you know you've seen all the standard pool-type fences. That white backdrop is misleading. It's not going to be like that.

Chairman Reinhardt – Alright, there's some of those pictures that I saw and I think I'm looking at picture number 7, at least it's been marked as 7. That last one, all the brush, vegetation I can see the slope. If I understand the county planning board's comments is that if you could do as much as you possibly can to keep the buffering there.

Mrs. Robins – Oh, we want the buffering.

Chairman Reinhardt – I know that's not all your property. So what you're asking is to go five feet to the property line.

Mrs. Robins – Five feet away from the property line, yes.

Chairman Reinhardt – Correct. So I don't know if that tree that looks like it's just off to the upper left hand corner. Is that your tree?

Mr. Robins – We intended for that screen to stay there. The tree is actually hanging over. The tree is probably about 5-7 feet onto the other property. And, the other screening, we're trying to preserve as much of that as possible to keep a natural barrier there.

Chairman Reinhardt – So you wouldn't be opposed then that whatever buffering or vegetation that is on your property to continue to maintain it and keep it there. Just because you're so close to the property line as not to disturb that.

Mrs. Robins – We don't want to disturb any of that. We would like to preserve every last tree and seedling and anything that will grow there.

Chairman Reinhardt – So if the board decides you'll be okay then with preserving as much of that vegetation as you possibly can.

Mrs. Robins – Absolutely.

Chairman Reinhardt – Anything else you want to add before we ask some other follow-up questions?

Mrs. Robins – You should have, I don't know if you did, but you should have by this point received notice from at least three neighbors, Ed Lysyczyn, Barry Buffen and John Sobraske. All of whom are our closest neighbors that we know. We know you they are and whatever, that they had no problem with it whatsoever. So I don't know if you did, but you should have received that.

Ms. Reese – I'm not sure if we got one from Barry, but we definitely have the other two.

Mrs. Robins – Okay, he may have communicated that to me in an email when I was just kind of doing a sounding board, just making sure everybody would be fine. Earlier in the process. But he said he had no problem with it and Ed and then, John as well.

Chairman Reinhardt – Let's ask some questions. Donna, do you have any questions?

Mrs. Morley – I don't. They did their homework well.

Chairman Reinhardt – Good. Sarah, questions?

Ms. Mitchell – No, I think the pictures helped and I'm I think with the fence being there that helps with the buffer as well. I'm fine with the application the way it's presented.

Chairman Reinhardt – Fred, questions?

Mr. Salsburg – There's a 3D drawing it's been on the screen. It doesn't seem to agree with a line drawing. Can that 3D drawing come up? I don't see a number on it. We had the discussion about the fence not being correct was on it.

As long as this one's on, there's a it looks like a roof overhang or the 5 feet to the line does that dimension line point to the foundation? And, then there's a line outside of that, what does that represent? Looks like it's part of the building. If it is, then it's a four foot setback, not five.

Mrs. Robins – Oh, I see what you're pointing to. We need to be able to see it, oh there we go.

Mr. Salsburg – What's that five feet point to? There's another line outside of it.

Mr. Robins – I'm not sure why that line is there, it's not intended to be.

Mrs. Robins – We are intending this to be five feet from the lot line. Including any overhang. And I can't tell from this because we didn't do it the pool company.

Mr. Salsburg – Well the other drawing shows the as I look at it, pergola is right up against the start of the steps and that it's moved over. It would make 10 feet then or so from the lot line. I would much prefer to see that.

Mrs. Robins – I'm not sure that I understand.

Mr. Salsburg – Can we bring that drawing up?

Chairman Reinhardt – Where the steps are at the top of that diagram and then you see the 40, where does the pergola start? I think what Fred was trying to ask.

Mr. Robins – I think the pergola starts at the top of the steps.

Mrs. Robins – At the top of the steps. If you look at that other picture, that shows the actual pool.

Mr. Robins – I think the 3D one is more accurate.

Mrs. Robins – That is more accurate in terms of.

Mr. Salsburg – (referring to drawing) if you notice the steps are recessed into the pergola which makes me think the pergola is brought up to the deck by the hot tub.

Mrs. Robins – No, no, no, no. The pergola is not, look at that other picture because there's a space between, see that hot tub?

Mr. Salsburg – I saw that, but that space is not in this other drawing.

Mrs. Robins – Yes, it is. Between the edge of the spa right there it says 7.9 feet to the edge of the wall, the retaining wall. Am I missing something?

Mr. Salsburg – No, this drawing doesn't seem to agree with the other one.

Mrs. Robins – I think you're seeing a shadow or something on that other one because when I'm looking at it, right here. That right there, that wall, see the shadow, there's some shadowing there.

Mr. Salsburg – I see that, but the steps are recessed into the pergola itself.

Mrs. Robins – You mean into the retaining wall?

Mr. Salsburg – There's no space between the steps and the pergola in this drawing, it makes me think it's closer to the pool which I think is a good idea because that.

Mrs. Robins – I think the 3D is throwing it off.

Mr. Salsburg – It's pretty close. And, the discussion about the vegetation, was that on the other side of the property line?

Mrs. Robins – Some of that vegetation is on our property and some of it is on the neighboring property and we would not want to disturb any of it. I mean it would be our choice that it's all left as a buffer. If we could have a thicker buffer around the place, we would like it. Well I guess what I'm having trouble with is with your comment that the pergola though . . .

Mr. Salsburg – The top of the steps there's no gap. You're already several feet

Mrs. Robins – Oh, it's the way he drew it, I'm seeing it. So you if you look to those steps on the schematic. On, not the 3D. I see what you're saying. So if you look at this, this here right, I can't point to it, move your cursor directly down, right there, that's the pergola area. Am I right?

Mr. Robins – I'm not sure why he drew it over that way.

Mrs. Robins – He did not draw it correctly.

Mr. Salsburg – That's going to increase the five foot side off set then. Which is good.

Mrs. Robins – He did not draw this correctly. I can see what he's seeing now.

Mr. Salsburg – I mean I'm a little confused because they don't agree with each other.

Mr. Robins – This isn't portraying it exactly because it is five feet from the lot line.

Mrs. Robins – From the lot line, that's where we have the flags.

Chairman Reinhardt – So, I see what Fred is saying your pergola is 12 x 24, but that diagram is 12 x 28.

Mrs. Robins – I'm sorry. The concrete pad is 28, but the pergola will be 12 x 24.

Chairman Reinhardt – Okay, but the width is 12 feet, right there.

Mrs. Robins – Exactly.

Chairman Reinhardt – So, if the pergola starts where those steps are.

Mrs. Robins – That's where it's going to start.

Mr. Salsburg – That's shifted then about five feet.

Chairman Reinhardt – It should start right where the cursor is now. If that's the case, then you don't need to be, again, I don't know what the measurement is, but I think what Fred's driving at here is that's four to five feet closer to those steps so,

Mr. Salsburg – I scaled it as five feet between the top step and the start of the pergola, is about five feet. I think the pergola could move over to the steps and the side set back. . .

Mr. Robins – And, I'm thinking the way that that's drawn, that's space is not there.

Mrs. Robins – I know that space is not there.

Mr. Robins – We've measured.

Mr. Salsburg – There's something the matter with this drawing then.

Chairman Reinhardt – I don't mean to throw water on your excitement in the fire here, because it looks like it's a good project. And, I think Fred is right here, the problem that we have is, the zoning board is when it's granted we use the diagrams, exhibits that are submitted and if we then say, we granted as per the diagrams, exhibits, specifically the drawings, these drawings somebody looking back on it, it's going to be confusing on where's the pergola start and where does it stop. So, you can tell me and I believe you that the drawing is off, that it's not accurate, so I think the solution needs to be you've got to go back to your, what was he an architect, a designer, somebody say you've got to fix this, you've got to make it clearer where the pergola starts so that if you really need the five feet, okay, but it's confusing because that drawing doesn't add up to what you need and what you're asking for.

Mrs. Robins – Can we do this? The project is hopefully supposed to start and we really don't want to delay it, but can we do that you grant it based on the drawing being updated and submitted to you. Meaning, if the contractor doesn't match what you're asking for then it wouldn't be granted? But if he comes back and submits to you the drawing for the way that we're expecting it to be, to our specifications, then it would be granted.

Mr. Salsburg – Then it would be a 10 foot side set back, not a five.

Chairman Reinhardt – I'm trying to work this through, what you're asking for and what that drawing shows are two different things. And, I think it's going to give Al a bit of a hard time, well how does he know? When he comes out to look at the project he doesn't know where it starts and stops.

Mrs. Robins – I guess I'm going to ask what do you need in order to grant this variance? What do you need for me to go back and I'm struggling with the words.

Chairman Reinhardt – We need the target not to move.

Mrs. Robins – Exactly.

Mr. Benedict – I'm looking at an instrument survey that's in the packet. While it's not completely dimensioned it shows the patio area between the pool and the retaining wall, it shows the steps extending beyond the retaining wall and then there's an open space, then it shows the 12x24 pergola with a five foot set back beyond that.

Mrs. Robins – So it would have to match this is what you're saying and that's what has to be built to this?

Mr. Salsburg – No, that would be working on the wrong drawing. The pergola should move over to the top of the step.

Chairman Reinhardt – The way that I see that I think I'm looking at the same drawing Al is. There's the proposed pergola and then I think I see where the steps are. But there's distance between where those proposed steps are and the pergola, they are not connecting to each other, so I don't know if we can solve that by. . . Where is that pergola going to be in proximity to the steps and the house and the pool and everything else? And, I think it's a matter of five feet to 10 feet. But we're required to if we do grant variances, we do it as minimally as possible. When did you want to start digging?

Mrs. Robins – Well, they want to start digging early May and we have a conflict with the next, when is the next ZBA meeting? I think we have a conflict with that. We're going to be out of town.

Mr. Salsburg – Are we going on two weeks this month? Two week schedule?

Ms. Reese – April 19 is the next meeting.

Chairman Reinhardt – April 19 is the next meeting.

Ms. Reese – Right.

Chairman Reinhardt – What's the conflict with the 19<sup>th</sup>?

Mrs. Robins – I'm sorry, he's out of town and I'm out of town. I could possibly do it, but (I know you can't).

Chairman Reinhardt – I think we're still going to be zooming.

Mrs. Robins – I know, he's going to be out in California, California time.

Mr. Robins – I won't have cell service where I'm going.

Mr. Salsburg – Well if you could correct the drawing, you wouldn't have to be here. We could carry on.

Mr. Robins – So the question is, the diagram we were just looking at, if it would show the space as it really is. The space that you are referring to Fred, doesn't exist. On this diagram.

Mr. Salsburg – Well then the distance from the pergola to the side yard would become more like 10 feet.

Mr. Robins – I think that space,

Mrs. Robins – So, he's saying, yes, we are farther from the property line.

Mr. Robins – This is still five feet from the property line. This space here doesn't exist. Is what's wrong. Because just quickly, you can tell by looking at either one of the photographs, where we had one of the photographs from above looking down at the step area...

Mrs. Robins – With the big red circle

Mr. Robins – You could even see that there's no way that that's 20 feet to the property line.

Ms. Morley – Can I say something? I thought you said when you put the retaining wall up beside the steps you were going to bring that out even. Is that space there, the even spot that you are going to be putting the cement?

Mr. Robins – The patio and pergola area, if I understand your question, would be brought even to the steps. There isn't that space in between that's being reflected on the diagram.

Mr. Salsburg – Because it's drawn with the pergola too narrow?

Mrs. Robins – I think he has it set back too far.

Mr. Robins – Five feet from the property line but I think that the way he's showing the picture and diagram there's not that space there that you were referring to, Fred, in the middle.

Ms. Morley – The problem is not the pergola, is the pergola smaller than the flooring, I'm going to say the right word.

Mrs. Robins – Yes, not depth wise it's 12 feet. 12 feet deep, the pad is 12 feet deep, but the concrete pad extends 28 feet, the length and the pergola is 24. So, only the length of it, if that makes sense, not the depth.

Ms. Morley – So, I was thinking that was the retaining wall and was because you said the hill you didn't want to disturb it, but you were going to bring the flooring of the pergola out that far, but maybe that's not what I was understanding. Okay. Yeah, I think we need a new drawing.

Chairman Reinhardt – I understand what you're saying as far as the marking on the grass reflect what your intent is, but once you build all this the marking on the grass will no longer be there. This drawing is going to exist.

Mrs. Robins – I get it.

Chairman Reinhardt – So again to create a solid record and not to create further problems for our code enforcement officers to figure out, well what exactly did the zoning board grant or deny, but let's presume that it's going to be granted. All these pieces have to line up logically. Whether it be tomorrow or 10 years, they can say, no there's the plan that they did exactly what they said they were going to do and what the zoning board said it was okay to do. It's just dotting your I's and crossing T's.

Mrs. Robins – I get it. I understand that you need to have it memorialized. I am going to as soon as we're done here call the pool contractor to see if he can get that. Can he submit that directly to you once we tell him the discrepancy? And, let me just ask before we can go do all that, are there any other questions or concerns that we should have him address?

Ms. Mitchell – I had a question and Mike, I think this probably it directed towards you. I guess I'm confused because the application is for an area variance to where they're requested a five foot set back from their property line. Why are they... I understand that plans change and we want everything to look exactly how it's going to be in their back yard, but the application is for a side set back, what if they move the steps to the other side, but yet everything stays the same? Aren't we only looking at the set back at this point?

Chairman Reinhardt – We are, but if they don't need 10 feet.

Ms. Mitchell – I feel bad for the applicant to where they would have to come back yet another time to this meeting when they're asking for five foot setback. If we are all in agreement that we're okay with this being no less than, or no closer to the side property line of five feet then why wouldn't we be able to move forward with the application instead of carrying it over yet another week or another two weeks? I'm really just looking out for the applicant at this point.

Chairman Reinhardt – I understand what you're saying, but as we can't micromanage an application. And . . .

Ms. Mitchell – But, aren't we kind of doing that though, by saying that, I mean this diagram that we have with the instrument survey that Al referred to, that lays out exactly what they would like to do with a five foot setback from the side property line. Isn't that what we're here for to decide on that set back, not necessarily the layout over the pool and the hot tub and the steps go?

Mr. Salsburg – My reason for bringing it up was that maybe they don't need a five foot, maybe they can have a 10 foot setback.

Chairman Reinhardt – Their proposal was a 12 x 24 pergola and gave us a list of reasons why it had to be within 5 feet of the side setback as opposed to what is required is 15. The leach field, and we'll get to the reasons, but as the contractor, the diagram, it could be by an error makes it look like that the pergola is the same size as what they asked for they don't need it to be within five feet of the side setback, it could be 10 and if we do grant a variance, we do it minimally. Not just to say well it's the needs and wants. I don't think they are meaning to do that, but sometimes the theory is well it's my property I can do whatever I want with it, so I should be able to build all the way to the lot lines. Well code says you can't do that.

Mrs. Robins – We are really are not.

Chairman Reinhardt – I know that.

Mrs. Robins – We understand what your rule is and why you have it and the precedent and all of that. We're not asking to go clear to the lot line. Not one thing just to note is that in that area there's going to be a patio and we could take that surface patio, that's concrete, all the way from one inch to the lot line and then just erect something temporary. You know, that is not our wish. We did look at it, but if we wanted we could take the concrete and take it all the way back from one inch to the lot line. We're really not wanting to do that and we really don't want to do something temporary. Be we really, we're trying to operate within the guidelines.

Chairman Reinhardt – And also, what I don't want to start creating is I like to think we take this seriously that for each and every application we follow procedures, we follow the rules. We don't bend the rules just because it's close enough. So, these are the things I think it's important, not only for this board, but for the town and every other applicant that comes after Linda that they know when the application comes in we put the criteria to it, if it fits, it's granted. If it's not then it's denied and in this instance, potentially and I don't think it could happen, but it might that you have a situation when somebody challenges this application and says wait a minute, this drawing doesn't add up. It doesn't add up to what they're asking for and what the drawing shows. I don't think it's a huge ask to ask that designer to say, make that drawing right, so when this is on file anybody that looks at it afterwards is going to be able to tell this fits. It makes sense. Everything adds up.

Mr. Robins – Assuming we get this corrected and it represents what we are representing here. That we need the 10 foot variance, five foot from the lot line. Are there any other issues or questions that the board is going to raise at the next meeting?

Chairman Reinhardt – I don't see it. I think just that drawing needs to be cleaned up, so it's consistent to what you're asking for. I don't. Fred, do you have any other questions? If that drawing is cleaned up?

Mr. Salsburg – I'd like to see that line, that's outboard of the five foot arrow defined or removed.

Mrs. Robins – Say that again, please?

Mr. Salsburg – Okay. On the flat drawing where it points to five feet from the side lot line, there's another line, closer to the lot line than the five feet.

Chairman Reinhardt – Is that the edge of the retaining wall or is that the pergola?

Mr. Salsburg – I don't think there's a wall there.

Mr. Morley – No, but it is bigger than the pergola. The base of the pergola, the decking or whatever they are calling it, the patio is bigger than the pergola. So, that's probably what that line is.

Mrs. Robins – Let me be sure that I'm clear. Right where it is the 12 foot line, going across that space and right below it you have a five foot line, they are both pointing to that inner one and you're wanting to know what is this exterior line? The one right next to it, is that correct?

Chairman Reinhardt – Correct.

Mr. Salsburg – Yes.

Mrs. Robins – I will either have it removed or have it labeled.

Mr. Salsburg – If it's true then the dimension line should be to that, not the inner one.

Mrs. Robins – Okay.

Mr. Salsburg – If it's not there, then take it out.

Mrs. Robins – So, we will see you back on the 19<sup>th</sup>. Thank you. We do appreciate. And, I would just respectfully ask that if as you're thinking about it that between now and then if there are any questions, so that we aren't met again with questions, and have to go back that you could just give me a call or email me.

Chairman Reinhardt – I understand that. The problem is we would be violating open meetings law. If any questions the board has right now, I agree with you, you should ask right now, get them on the table so you can address them. It kind of makes sense, I hear what you're saying get these questions out of the way, but we don't want to violate open meetings law with that. As far as I see it, I just like to see that drawing cleaned up so it makes sense on where that pergola actually is, because that drawing isn't making sense.

Mrs. Robins – I will get on the phone. Thank you.

Mr. Salsburg – I'm sorry to have brought it up, but I totally agree with Mike on this.

Mrs. Robins – It's okay. We'll make sure we work within the guidelines and get you what you need.

Chairman Reinhardt – Let's just check real quick, Donna, any questions other than getting that drawing cleaned up?

Mrs. Morley – None, thank you.

Chairman Reinhardt – Sarah, any other questions?

Ms. Mitchell – Nope.

Chairman Reinhardt – You good? Fred?

Mr. Salsburg – No.

Chairman Reinhardt – Okay, great. Thanks so much Linda for your patience.

Mr. and Mrs. Robins – Thanks.

## 2. BROOKS & HARLOW SIGN AREA VARIANCE – 7-Z-2021 (AMENDED)

The DiMarco Family LLC on behalf of BHS Enterprises is requesting to install a sign at Fisher's Landing Plaza, 7387 State Route 96, suite 500 for Brooks & Harlow Salon totaling 57.55 sf whereas per 165-5B(3), 34 sf is allowed. The property is zoned Commercial/Light Industrial and owned by the applicant.

Chairman Reinhardt – Alright, Paul. Your sign. You've given us ideas of what it would look like with I think the request was 91 and change and 60 and then 34, if you went right to the code. And I don't know if it was the follow up or a subsequent note that I saw that there was some discussion about you can't see it from the right of way, it's not legible. (lost audio)

There was some presentation that you made that if it were per code at 34 square feet that it wasn't legible from the right of way. That isn't an element of the code and I don't know where to fit that into the criteria, so I understand but I don't think that really is viable to it. I think we have to go to the criteria and I think you know the criteria and we can go through it if you want, but it needs to fit in to the criteria on why it is that whether it be 91 feet or 6 feet or anything above 34 feet.

Mr. Paul Colucci – Sure. Just to recap, Emily Chen is joining me also. She's the tenant and we're happy to announce that she has moved into the new space as of last Friday. So, she's now operating in the new location. When we spoke last month we had as you identified the request for a sign, business identification sign in excess of what's allowed and the request was for 90 sf. And it wasn't so much legibility as at the time we were really discussing trying to make it proportional to the façade and I was talking kind of abstract about façade renovations that were forthcoming so the exhibits that we submitted that you're in receipt of now show the proposed façade renovations. I will be before the planning board for architectural review next week and we rendered the sign into those elevations and we heard loud and clear the board's concern relative to the size that we originally requested, we still feel very strongly that 34 square feet is going to be a little bit difficult from a legibility standpoint. As it relates to the size of the

font and the letters given that her copy is on two lines, the font gets fairly small and the placement of that sign is now shown on the new façade so that you can see it in proportion to not only the tenant space that Emily will be occupying, but also comparative to the other signs that are affixed to the façade. And, we have rescinded that request for 90 square feet, now the request is we call it the 60 square foot proposal, but it's actually slightly less I think on the exhibit, it shows exactly I think it's 57 square feet and change, if I'm not mistaken and the copy on the main font 20 inch letters and on the secondary font 16 and a 1/10 for the copy size.

Hopefully that gives you a little bit of an idea of what the sign would look like. We really feel that the size of the element that we're creating on the front of the revised façade renovations the smaller sign would really get lost and almost be dwarfed in that sign field, so we are trying to have it be aesthetically pleasing, proportionate to not only the space that she's occupying, but also that element and you know, when we look at the criteria we tried to say, is it going to create a detriment and the belief is no. Is there any hazard created, no. We're talking about a sign and trying to convey clear information to passersby at a posted speed limit of 50 on Route 96. The challenge for any business owner is having their business identified and we just want to help Emily achieve that in the sense that (inaudible).

Chairman Reinhardt – Paul let me ask you for some, so I've got these dimensions right. Is it fair to say then the area of where the proposed sign is going to go can we call it an A-frame?

Mr. Colucci – Yep.

Chairman Reinhardt – Alright, so from vertical post to vertical post of that A-frame, I thought I saw a diagram someplace that's that 31 feet in width.

Mr. Colucci – Yeah, that's correct on the previous exhibit that I sent in Mike that was 31 feet as between those posts.

Chairman Reinhardt – Okay and if I'm looking at the elevation where it says 60 square feet option, I see that in between those two vertical posts there's a double door off to the left a little bit and to the right there are two windows. Correct?

Mr. Colucci – Correct.

Chairman Reinhardt – Now what I want to sort out is how many tenants can go in there?

Mr. Colucci – So, only one. Emily will occupy from the windows just on the inside of that left post. Her new demising wall is just at that window edge on the inside of the left post and then she goes over all the way to the other side of the post. She's actually 34 square feet of frontage. Is what she occupies is the width of her tenant space, so proportionately I think between those two posts is about the same as the width of her space.

Chairman Reinhardt – So those double doors that isn't . . .

Mr. Colucci – That's isn't a shared vestibule. That goes 100% into Emily's space.

Chairman Reinhardt – One concern I would have is well, I'm sure you know, you can carve that up any which way you please. Because one argument potentially is well that from vertical post to vertical post if that's always going to be one tenant, I think the argument could be made that well then that tenant should have a sign that's at or about the width of their tenants. But, if you carve that in half, then there

potentially could be another request to say, we want another sign and we want it just as big and now you have two 60 square foot signs in a small space and it gets jammed up in there.

Mr. Colucci – She is going to be the only tenant that would be occupying space directly behind that element. Her space goes a little bit to the right of the right column and just inside that left column. The only vacancy we have right now would be the tenant just to the left of her and they have a shared vestibule right now for access with Enterprise and if we demise that into more than one tenant we would have to do a new store front entry likely in one of those windows that you see under where it says tenant.

Chairman Reinhardt – I don't speak for the whole board, I'm just putting an idea out there, that would you be open to the idea that should the variance be granted that as a condition that that space is not further divided so as to eliminate the possibility of another tenant going into a 10 foot, a 15 feet front as opposed to at 34 foot front.

Mr. Colucci – I'd rather have the variance go with the actual tenant because given the life cycle of a plaza, I don't know who may come in there and if they are going to occupy that. Likelihood is yes, that they would take space as demised, but we see a lot of different tenant sizes come in and I just need to preserve flexibility. If I had something that locked me into that couldn't be future demised in any capacity that would really be difficult.

Chairman Reinhardt – You'd rather see a sunset provision for this particular tenant.

Mr. Colucci – Yes, I would rather see the variance go with the tenant.

Chairman Reinhardt – Well let's hold that thought. Alright, Donna, any questions?

Ms. Morley – Can you bring up the picture again? Was that the new façade that you first showed? With the size of the sign? Is that the new façade you're talking about?

Mr. Colucci – That's correct. That's the largest one, that's the 90 square foot one that is rendered in there on that one, Donna.

Ms. Morley – Is there one in here that has the 60 square foot or no?

Mr. Colucci – There it is. 57.55

Ms. Morley – Okay. Thank you. That's the only question I had.

Chairman Reinhardt – Paul, what's up there now. There's a temporary sign? I drove there the day, day before yesterday.

Mr. Colucci – Yep, there's a temp banner right now that was put up just so that she could identify her new location. And, the Fisher's Landing sign that's there is going to come down. We don't know if we want to put that exact sign back up or do something a little bit more modern to complement the new architecture, but for now I just rendered in the existing Fisher's Landing.

Chairman Reinhardt – Do you know what the font is? The font that's on the temporary sign?

Mr. Colucci – I don't know what that font is? Emily, do you know off hand what they used for that?

Ms. Chen – The font size or the font name?

Mr. Colucci – The font size. Do you know what size letters Ewing Graphics did for the temp banner?

Ms. Chen – I'll try to look it up on my emails, I'm not sure.

Mr. Salsburg – Well it's going to be coming down anyway probably.

Ms. Chen – It's just to identify where we are because we moved, so we want to make sure they can find us.

Chairman Reinhardt – I understand that. Just for comparison. I was able to see that font as I was on 96.

And, I know part of it is, we've gone through this before its well, you want to be able to identify your business but it doesn't mean that you get letters that are two, three size times, what the code requires. We can't rewrite the code.

Sarah, have any questions?

Ms. Mitchell – I don't know if my question would be for Mike or for Al? Do any of the signs that are currently on that building have or did they need variances or do they all meet code the way they are now?

Mr. Benedict – I can't swear to it, because I don't have the information in front of me, but I would tend to believe that most of them are fairly accurate.

Ms. Mitchell – So then, my concern would be if we granted a variance for a sign bigger than code what prevents the other tenants from asking for the same thing and then we would be setting a precedent, so those are the comments I have at this point.

Chairman Reinhardt – So, to answer that question as much as I'd like to say that there is no precedent set, it is a case by case basis. Each application is unique in and of itself, but it does go to an argument to say well how does it change the character of the neighborhood? So to your point, if some signage is permitted to be larger in that instance well if you go two or three tenants down, how is it not changing the character of the neighborhood when it was just 60, 80 feet down the road, it shouldn't change the character of the neighborhood 80 feet either way. I don't know if I explained that right.

So, it's a thought. It's an argument. It's a concern and as I look at the, go ahead Sarah.

Ms. Mitchell – I saw her sign actually today, where she used to be because I had a dentist appointment, so the sign that she used to have had a white background, so that sign is a normal size sign. You could read it because of the white behind it, so she's been able to grow her business from its current location to expand to the location she is now meeting code with that sign. I'm a female who goes to a specific place to get her hair done and her nails done and I can be very honest to tell you I'm not even sure if the places I go to have signs and where they are located. So, I feel I just have concerns with granting almost double the size that's allowed by code. That's it. That's all I have.

Chairman Reinhardt – No, I agree with you. I think we have talked before about how do your clients find you, Emily and I think it's mostly by appointments, they know where you are. They are really not looking for signage and I know there is an argument to be made to say well for new customers drive by

and they see a sign and they say, oh gee Brooks & Harlow I'm going to look them up and I'm going to give them a try.

Paul, hopefully you've read it, it's no secret the county planning board especially up and down the corridor is very protective of over-signage and they are considering that, no surprise, that the proposed sign is excessive. I think they looked at it, correct me if I'm wrong Paul at the 91 square feet, they didn't see the 60.

Mr. Colucci – That's correct. They saw the original request.

Chairman Reinhardt – I don't know if they would have thought anything different at 60 feet.

Mr. Colucci – I don't think they would have. They pretty much wholesale would always deny a sign variances.

Chairman Reinhardt – So, so even the code says 34 square feet in this instance and you would have asked for 40, it probably would have been excessive signage and denied it which then requires the board for a majority plus one. Super majority.

Fred, questions?

Mr. Salsburg – Well I'm kind of in favor of the applicant on this. I think the smaller size sign would look funny. It's a big area and I think the concept of them coming down 30 square feet, we could go up 30 square feet and let it ride with the tenant and I don't see a big problem down the line. Because there aren't very many places that have such a big area to cover.

Chairman Reinhardt – On that note, I think it's not really the façade that's driving this if I understood you, Fred, correctly. Because if the façade was bigger than argument could be made that why can't the lettering be bigger. It has to do with the store front, that's what the code requires and dictates and we can't rewrite the code because just the façade is bigger it's not enough element of it.

So, if I hear you correctly, Fred, you would be more likely to grant the variance at 57.55 square feet?

Mr. Salsburg – I would.

Chairman Reinhardt – Donna, what do you think on the proposal of 57.55 square feet?

Ms. Morley – I'm in agreeance with it.

Chairman Reinhardt – You'd be in Fred's camp?

Ms. Morley – Yep.

Chairman Reinhardt – Sarah, what do you think?

Ms. Mitchell – I would be opposed to granting the bigger sign.

Chairman Reinhardt – I think you're moving in the right direction. I know Emily you've got your sign up, you're open for business and business is a good thing. Paul, were you here at the beginning of the meeting?

Mr. Colucci – I was.

Chairman Reinhardt – So, Matt is necessarily absent. So with four of us, you would need all four votes to get this granted. One would be a denial. So, it almost with Sarah being the more likely than not we could certainly go through the criteria. I could give you the option, I can't speak for Matt. I could certainly let Matt know what has transpired. If you want to push it to the 19<sup>th</sup>, you may have a better chance of getting the variance granted. If you want to go that way, or we could take a vote today and you may not like the answer that you get.

Mr. Colucci – I appreciate the opportunity. I would like to request just to table, so that we could have the benefit of the full board. And, we know that we're in for planning board review, architectural review next week. I don't anticipate a lot of changes with architectural review but there could be some comments from the planning board that also give some bearing on how this could look relative to that area. As Fred you know accurately mentioned it really is trying to get something proportional to that sign field. That's really where Emily and I you know, originally started looking at staying something in excess of what is allowed by code is really necessary here so it balances itself out, so I would like to request to table. It sounds like you guys are meeting again on the 19<sup>th</sup>?

Chairman Reinhardt – Correct.

Mr. Colucci – And, we'd be happy to come back at that meeting, if that's acceptable.

Chairman Reinhardt – Alright, if you could, Al, could I ask you to do a little research for that plaza if any of those current tenants needed a variance for their signage?

Mr. Benedict – Yes, I can do that.

Chairman Reinhardt – And, also if they are code compliant.

Mr. Benedict – Yes, I can do that.

Ms. Morley – Also, when you drive by that plaza, that elevation is way lower so the sign is down in there, so it's not like you're driving by on 96 and seeing everything else that you're seeing. Like the places across the screen are all street level. That plaza is down in there, so does that make any difference as far as size wise when you're looking at it? Or no?

Chairman Reinhardt – I invite you to drive by there, the temporary sign is up. And you can see it from 96, what I don't know is what the font is.

Mr. Colucci – And, we can provide that information to Kim. We'll get the graphics from Ewing Graphics so you have something comparative to understand. How large the font is on that temporary banner.

Mr. Salsburg – Good move.

Chairman Reinhardt – Great. Anyone have any other questions for Paul? Looks like we're all good?

Mr. Colucci – Thank you everyone.

Chairman Reinhardt – Alright. You're welcome. Thanks so much. We'll see you on the 19<sup>th</sup>.

Mr. Colucci – Thank you. Have a good night.

Chairman Reinhardt – You, too.

Ms. Morley – Sorry, Al. I didn't mean to interrupt you.

Mr. Benedict – No problem.

### **NEW APPLICATIONS**

#### **3. UNITED REFINING HOLDINGS (KWIK FILL) SHED AREA VARIANCE – 8-Z-2021**

##### **& SPRINKLER WAIVER – 9-Z-2021**

United Refining Holdings, Inc. (Kwik Fill, 7453 State Route 96) is requesting an area variance to §211-22C(3) for construction of a shed at Kwik Fill, 7453 State Route 96, Victor that will reduce green space. Applicant is requesting a sprinkler waiver per §83-4F(2)(a)[2] as the shed will not be 100 feet from the principal structure. The property is zoned Commercial/Lt Industrial and owned by the applicant.

Chairman Reinhardt – Okay, so your application for Kwik Fill for a shed. A 10 x 12 shed. This would be on the north side of the property?

Ms. Schaeffer – Right.

Chairman Reinhardt – I think you heard earlier on we can take some facts and information and your presentation but it's got to go to the county planning board for their recommendations and I read, I think it was Marty's comments. Did you have a chance to look at that, Ginny? I can run through it quick if you'd like.

Ms. Schaeffer – Why don't you remind me what those comments are?

Chairman Reinhardt – That there was a 2013 variance granted with a reduced set back, but the bigger piece that looked like it was a concern was the reduction of open space from 35% to 29% and then putting a 120 square foot shed would further reduce the open space. Also that the shed appears to be closer to the street than the principle structure and that commercial buildings require fire sprinkler systems. So I think those concerns, not necessarily need to be addressed today, but they do need to be addressed eventually. So, if you'd like to make your presentation and fill in the gaps, we'd love to hear it.

Ms. Schaeffer – We would like to put a storage shed on the north side of the building. I mean we definitely do not have sufficient space inside the building for storage. We will not ask for electric. We will comply with everything that the fire marshal has requested. No heat. No electric. No mulch. We'll put no smoking signs on the shed. It literally just for storage, because we are so lacking in space.

Chairman Reinhardt – Storage of what? What do you plan on storing in there?

Ms. Schaeffer – We are going to store for example our cases of cups, our brooms, our shovels or case water, sellable goods (nonperishable, of course).

Chairman Reinhardt – No gas products, lawn mowers, things like that?

Ms. Schaeffer – No, nothing flammable at all. Nothing.

Chairman Reinhardt – How have you been solving the problem to date then, as far as your shovels and dry goods, cups and things.

Ms. Schaeffer – With great difficulty. We've had to put shelves way up in the air to house the cases of cups and juggle around the cases of beer and pop that are delivered. We take deliveries twice a week to eliminate the massive amount of product that we need just for a week. Our walk-in cooler is very narrow. A lot of the case beer is stored in there. It's difficult to get around.

Chairman Reinhardt – How does it compare to the Kwik Fill that's a little further south?

Ms. Schaeffer – Down the road? They have two huge big back rooms. That building is, and I'm going to guess, more than twice the size of the building we are talking about now.

Chairman Reinhardt – Fred, questions?

Mr. Salsburg – Wouldn't this be referred to as the east side of the building? How big is the shed?

Ms. Schaeffer – 10 x 12

Mr. Salsburg – No, I don't have any questions. I'll save mine until the next meeting I think.

Chairman Reinhardt – Sarah, questions?

Ms. Mitchell – No questions, really, just some comments about how cramped the site is already. And, now we're just going to be adding more items to that site. It's very difficult even when you're just stopping to get gas, getting in and out of there already. I feel like there's been numerous variances already, I believe there were two that Marty mentioned that were granted already for that site, so that's all I have at this point. It was just comments.

Chairman Reinhardt – Alright, thank you. Donna?

Ms. Morley – None as of yet, thank you.

Ms. Schaeffer – The shed wouldn't cause a problem of getting in and out of the location. It's not on the driveway. It's on the side of the building in the grass area. I don't see how that would be congested at all because that is not even a traveled path for our customers.

Ms. Mitchell – I understand that. I'm saying the site itself is very cramped within the numerous things that are already there. That was just the comment that I had.

Chairman Reinhardt – I don't think it's any secret. That's a touch parcel. I know we looked at this very carefully and I think it took a number of meetings to grant the variances that went along with this back in 2013. I understand the problems and the concerns about storage and keeping at least close enough to the facility where you can run your business.

Ms. Egger – My name is Jen Egger. I work for United Refining Company. I'm the permitting coordinator. And so Ginny and I have been working together to do the paperwork and try to get the application together. We did look at other scenarios here. Obviously just where the building is located it

flows to the rear and side setback lines and obviously it would be real cost prohibitive to put an addition on to the back of the building. So really it's come down to this shed and even with the variance that we were given before with the open space. Looking at that in and of itself. In order to not reduce that open space literally we would only have 32 square feet to work with. We're going to have to reduce the open space no matter which way you look at it, just because 32 square feet is not going to really give us any storage option. And, we tried to make sure that we work with contractors that are local, they are using reputable materials, everything is aesthetically pleasing. Just the whole look of this overall shed, I have to be honest, to me when I think of a shed I think of like an Amish built, real rough cut and that's definitely not what we're looking for here. And definitely it's a good problem to have that we have so much customer traffic coming in there to need the additional storage space. It is definitely is something that would really help the business.

Chairman Reinhardt – I understand that. I'm not disputing that your concerns and there's a potential need for it and looking at what the code allows, requires and I think the zoning board starts to get very concerned, sensitive to the fact that when there are multiple variances, really and then spread out and it's another concern, another concern, another concern as time goes on. It's you take the property as you found it, you improved it, it looks great. But sometimes you can't put that square peg in a round hole. There's a limit to how much you can put on a piece of property. I'm not dumping a big cup of cold water on the thing, but we need to also hear is what the county planning board has to say. Hear their comments. I think you know that. It's on 96. We'll have our other board member back, so we'll have a full board and next time we'll review it some more, probably ask a few more questions, but I'm encouraged on the piece that you're not going to keep flammable things in there. It doesn't necessary eliminate all the concerns, but I think it would at least address some of them especially on the sprinkler system piece of it. I welcome, thoughts, comments, concerns. The more information we have the better. Anything else you want to add?

Ms. Egger – I guess at this point it's just more questions. So, the next piece is to go to the county planning board and they are going to render their comments and their questions and then we come back to you for the final decision or I guess I'm just trying to make sure if there's changes that need to take place or where that all fits into the process.

Chairman Reinhardt – It's a little difficult to predict what they're going to say, so once they make some comments, it could be anything from a passive comment, like suggestions or something I think is if you heard the last application they were recommending that the application be denied. So that then by law requires the zoning board to have a majority plus one, a super majority. I cannot predict what they are going to comment on or what they think about it, but I can tell you they are very concerned about the corridor looks like and the changes that are made. But, I don't know how they are going to look at a shed. But the facts that I think that they have, the things that we talked about today I think will be helpful for them to make a determination, I should say recommendation on what to do with this.

Does that answer the question? Anything else?

Ms. Schaeffer – Well I guess now we're coming back here on the 19<sup>th</sup>. What concerns does this board have? What will you present us with so we can prepare with answers, solutions for you.

Chairman Reinhardt – Well I think you heard the one concern we have is the further reduction of open space. I don't know if that's a problem that can be solved. Considering that the first application, there's quite a bit of acreage, where do you put the pergola, can you put it to the north to the left, right, left, whatever the case may be. You can't do that here, there really is no alternative it's an all or nothing. Unless you build up, if you raise the roof on it. I don't think you're really considering doing that.

Ms. Schaeffer – Not at this point, no.

Chairman Reinhardt – Right, right. But, it's what would be the viable alternative, feasible alternatives for you. There's no more open space. This is it. You've already got a variance for limited open space. I don't know if you can do things off-site? I can't imagine if you're, I suppose if you were to store a shovel during the winter, you could find a place for it. But if you are looking at storage there's only so many cups and things you can keep on site and you have to go off site. And somebody's going to have to go back and forth and keep replenishing the shelves with whatever it is, the dry storage. I don't know. I don't run your business so I don't know how cumbersome or how much a problem that is. And, also without really trying to outthink the county planning board, I don't know what they are going to recommend, suggest or be concerned about. I don't have any other concerns. I want to wait and see what the county planning board has to say. Fred, do you have any concerns? Things that they can work on for the next meeting?

Mr. Salsburg – No.

Chairman Reinhardt – Donna?

Ms. Morley – Did they render that they did not need a sprinkler system in there? Because of the square footage or? I read it earlier, but I don't remember what it said.

Chairman Reinhardt – I think Marty's comments were that because it's a commercial building, it's going to require a sprinkler system, however there would be a waiver to that if the fire marshal after a review is comfortable enough that in that instance he would recommend a waiver presuming that there's no flammable things in there. Just dry goods and then I think he'd direct us to grant the waiver to that, so it's a little premature. We would have to see what the fire marshal has to say about that.

Ms. Schaeffer – Originally when we submitted the application, we were trying to put electricity in to it, so with the fire marshal's comment, he came back and said that he would prefer that there not be electric in there, so at this point we're not considering putting electric in the shed, just for that reason.

Ms. Reese – Mike, he did have some comments. He asked them further questions, they got back to him and then his comments are in the dropbox.

Chairman Reinhardt – Okay. Good. So the fire marshal piece is all set. Sarah, questions, concerns, comments.

Ms. Mitchell – No, nothing further.

Chairman Reinhardt – Ginny, Jen, anything else you want to add before we see you in a couple of weeks?

Mr. Egger – No, I don't think so. Thank you for your feedback. We really appreciate it.

Mr. Schaeffer – Yes, thank you.

Chairman Reinhardt – Al, anything else you want to add or touch on before we table this one?

Mr. Benedict – I had some thoughts. Obviously, I didn't write the review but I did meet on site originally with Ginny. As far as the shed being closer to the road than the principle structure, you've already got a

canopy that is already in that situation that has already been granted a variance. The question is which one do you consider the principle structure, the canopy or the convenience store. I'm thinking if the gas station wasn't there the convenience store wouldn't be. Whereas I doubt anybody would put in a convenience store and not have a gas station. That's my thoughts. As far as the open space, we're talking about a change of somewhere between 60 and 90 square feet. They were asking for.

Mr. Salsburg – It would be 120 A1, 10 x 12.

Mr. Benedict – Yeah, but you granted them a variance for 29.2 when they did the site plan, they ended up with 29.3, so they had a little bit of extra from that, so you're asking for another 120 square feet, it's really only 80 square feet or something like that. That's just the comments I had.

Chairman Reinhardt – I appreciate that A1, if I understand you correctly it's the canopy on top of the pumps and arguably that's the structure forward of the principle structure.

Mr. Benedict – Correct.

Chairman Reinhardt – So really and the shed is not forward of the pump canopy. So, I think the biggest issue that we're dealing with here is the reduction of open space.

Mr. Benedict – That would be my opinion, yes.

Chairman Reinhardt – And, we'll wait to see what the county planning board has to say about that and then we'll go from there.

Everyone else good?

Ms. Schaeffer – We would hear from the county planning board at the meeting at the 19<sup>th</sup> or would we hear the results of that previous?

Chairman Reinhardt – Kim, do you know when we expect to hear from the county on this?

Ms. Reese – Typically, the meeting is Wednesday, a lot of times we get the comments back by Friday, but I would send them to you as soon as they came in. Could be Monday before our meeting, but as soon as I get them, I'll forward them to you.

Ms. Schaeffer – Thank you. Have a good day.

Chairman Reinhardt – You, too. Have a good night.

Chairman Reinhardt – Alright, a motion to adjourn?

On a motion by Ms. Morley and seconded by Mr. Salsburg, it was unanimously decided to adjourn the meeting at 8:30pm.