

TOWN OF VICTOR ZONING BOARD OF APPEALS, May 17, 2021

A regular meeting of the Town of Victor Zoning Board of Appeals was held on May 17, 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; Mathew Nearpass, Vice-Chairman Donna Morley; Fred Salsburg; Sarah Mitchell

OTHERS: Michael Carletta, 6757 Aldridge Road; Al Benedict, Town of Victor code enforcement; Suzy Mandrino, Town of Victor; Kim Reese, ZBA secretary

Chairman Reinhardt called the May 17, 2021 Zoning Board of Appeals meeting to order at 7:01pm.

PLEDGE OF ALLEGIANCE

PAST MINUTES:

On motion of Fred Salsburg, seconded by Donna Morley:

RESOLVED, that the minutes of the meeting held on April 19, 2021 BE APPROVED.

Adopted: Ayes 5, Nays 0

PUBLIC HEARING:

1. CARLETTA HOT TUB AREA VARIANCE – 11-Z-2021

Michael Carletta, 6757 Aldridge Road, Victor, NY requesting an area variance for a 10' side setback to install a hot tub, whereas per §211-20C of the Town of Victor Code, a 15' setback is required. The property is zoned Residential 2 and owned by the applicant.

Chairman Reinhardt – First and I think the only application we have today, Mr. Carletta, Michael. What a good name! So, I'm just going to give you a brief overview. I'm going to take a guess that you haven't done a zoning application before. Is that accurate?

Mr. Carletta – That's correct.

Chairman Reinhardt – Okay, good. So the way that this works is the board is going to give you an opportunity to make a presentation. When I say take as much time as you'd like, we rather not be here until 10:30. (laughter) Give us an overview, your points and once you're finished, we will then ask you some questions. If you want to use any exhibits or diagrams that you have in your application feel free to, but when doing so since we are on Zoom, do the best you can to use compass points and landscape or markings or something that's permanent, your house, etc.

We won't talk over you if you won't talk over us. We'll make a good record. And, hopefully we'll get this underway in a nice, smooth manner. Okay?

Mr. Carletta – Okay, sounds good.

Chairman Reinhardt – So let's hear about your application for, it is a spa? Hot tub?

Mr. Carletta – That is correct. I think people use them interchangeably. Regardless, hot tub, spa whatever you want to call them. What we had done, we had professional drawings done, by a local

landscape company to put a design together for what our backyard is going to look like. Today the deck is existing and the concrete patio that you can see on the left hand side of that spot right there is there today. So, the house is a walk-out basement because the backyard has quite a large slope. So where you see the two planting options, the left hand side is a slope back further into the back yard and the right side where those trees are there is another hill going up towards the road. We are looking for a variance to put the hot tub 10 feet away from the property line versus the standard code of 15. If you look at that document right there, what's proposed is the 10 foot distance. An additional 5 feet would put the hot tub or spa almost directly under the deck and very close to the pillars that support the deck. So our thinking is to avoid any debris, any issues from coming off the deck and falling into or onto the cover of the hot tub. Not to mention give us a little bit of space between the posts and the edge of the hot tub for the steps. Just from the overall landscape due to the slope of the back yard really the only level location that we have to play with is in that back corner which is on the east side of the house. We have discussed with neighbors. The neighbors have seen these drawings. As far as I've heard the neighbors were all on board and approved. I believe emailed Kim. At least the direct neighbors anyways. The interesting part about this with the slope is that the slope is so high that you actually won't. If the trees are not there, the plantings you see are not there currently. You won't be able to see this hot tub from the road driving by. So really the only people that would have line of site to it would be the neighbors directly on that side on the east side of the house. So I think everyone can kind of get an idea of someone wants a hot tub, relaxation. What's actually nice about this one is that, we were on the fence between an in-ground pool and a spa. So what we decided on was this type of swim spa, so you get the relaxation and a little bit of activity in there as well. This kind of all stemmed from everybody being stressed out from Covid, my wife has the beginnings of rheumatoid arthritis, so that's kind of what's bringing us here today. I think the 15 foot mark from the property line is going to crowd it up and make getting in and out of that spa quite difficult.

That's my selling pitch, is the slope of the yard, not being able to see it from the road, we have the neighbors buy-in, we have a professional design and what it's going to look like after everything is completed. Relaxation, relief, exercise, that's the pitch.

Chairman Reinhardt – Alright. Thanks. Before I ask the board for questions, I would like to ask Al, are you familiar with the topography of this particular lot?

Mr. Benedict – A little bit.

Chairman Reinhardt – Is it fair to say with what Michael is saying that the slope, topography issues, that's pretty much the only spot it can go in?

Mr. Benedict – From what I recollect, I would say yes.

Chairman Reinhardt – Alright, that's helpful. Donna, do you have any questions?

Ms. Morley – No, I don't. You gave a wonderful presentation.

Mr. Carletta – Thanks, Donna.

Chairman Reinhardt – Sarah, what do you think?

Ms. Mitchell – If the patio, you have a fairly large patio it looks like it's all concrete patio? And, you have two different sitting areas. Is there a reason why this spa or hot tub couldn't go by the sitting area that's further in the back of your property?

Mr. Carletta – Are you saying, where you see the table with the umbrella?

Ms. Mitchell – Yeah.

Mr. Carletta – So that location what the trouble there is that we're going to have to build a retaining wall, you can see those stones right there. The hot tub is pretty big, it's 8' x 15', so if we were where that patio set is going to be, we'd have to pour more concrete, another two feet of concrete on the end of that patio. Off the edge, we'd have to add another, I think it's eight feet by two feet off the edge of the existing concrete patio, so that we could have two feet on the side that's closest to the stairs, so that if the company ever needs to come and service, that's how they would get in there. It's also additional (color), what I'm being told from the top of the swim spa, the joint of the cover is in the middle. It's a 15' long swim spa, so the doors open up from the middle, then fold over and then fold over again, so it's almost kind of sits like that, so there is a distance from the edge of the spa to avoid hitting those stairs. So I'm saying two feet of extra concrete off the edge of the existing concrete pad, I'm being pretty conservative on that, but it would take up a large portion of that existing concrete patio today.

Ms. Mitchell – Okay.

Mr. Carletta – The proposed drawing here has the spa sitting on a concrete pad. The material, the dark gray material is like a little bit like a cobble type material. So it's just going to be a concrete pad under the spa backfilled with a cobble/pea stone type material. So I don't know if that's relevant, but hopefully that answers your question. And again, really the way that the pad was poured was that there is a slope off of the back of that concrete, off the existing patio so that slopes down, so it's not only a two foot build out it's going to be two feet of building up material to have a level pad which is going to kind of make that pad a little bit strange, I guess, is the way to put it.

Ms. Mitchell – Okay.

Chairman Reinhardt – Fred, do you have any questions?

Mr. Salsburg – Did you say there's a note in from the neighbor to the east? That he's seen this and he's got no complaint?

Mr. Carletta – Yeah, I think Kim can back me up on this. Kim asked that the direct neighbors on the east and west, we don't have any behind us. We don't have any to the south that they bought in. They've approved it. I believed they emailed the town. They sent me text messages saying they are okay with it.

Ms. Reese – There is a letter from 6759 and 6755.

Mr. Carletta – And, we are 6757, so those are the two neighbors on either side.

Mr. Salsburg – Okay. I think that you can't see it from the road, you're going to plant tall enough vegetation around it per the drawing. I think it's looking pretty good from my standpoint. That's all I got.

Mr. Carletta – Great, thank you.

Chairman Reinhardt – Matt, any questions, comments?

Mr. Nearpass – One for Al, Al, what makes a hot tub a structure? I'm assuming without water in it you could slide this thing around, not like you'd really want to but, it's not like a pool or?

Mr. Salsburg – I'd be more like a shed.

Mr. Nearpass – But a shed, you usually stake it into the ground, usually what makes it a structure I thought?

Mr. Salsburg – A lot of sheds are on a bed of stone.

Mr. Nearpass – What do you think, Al?

Mr. Benedict – I think as I recall in the code it talks about accessory structures, accessory uses and that's why I think the swimming pools come in.

Mr. Nearpass – Okay. Either way, I always like to get to the bottom of that one it seems like it's gray, so the code doesn't explicitly call out a pool or something to that effect. I was just reading your letter and it really just called out accessory structure 15 feet from the lot line. "Accessory uses generally such as storage sheds must observe the 15 foot rule", so I didn't see where it was really putting other than using storage shed as an example of an accessory structure.

Mr. Benedict – That's the way we've always interpreted it and ever since I've been here, 21 plus years. A pool or an above-ground pool, it's the same as a shed.

Mr. Nearpass – Okay. I'm okay with it as proposed especially now that he's confirmed both neighbors are okay with it. Obviously neighbors can change over time so I am in favor, but I would want to make sure it was as proposed with the landscaping that you have around it and obviously I'm sure you want it to be private back there as well. So, I'm good.

Chairman Reinhardt – Okay. I think we have most of this covered. So, I think it's fair to say that correct me if I'm wrong, Michael but at least for the hot tub it needs to be or should be in close proximity to the house. Since it's heated and the further away you get it from the house, the more cost prohibitive it is. I haven't seen anyone put a hot tub or a spa in the middle of their back yard 30-40 yards away.

Mr. Carletta – We actually pulled a permit and put a shed out, I think it's a 130 feet away from the back corner of the house and I'm kind of kicking myself now because of the cost of the electric work to pull a cable out there is much more than I thought about. So, yes definitely reviewed that and took that into consideration.

Chairman Reinhardt – Okay, and you're comfortable if the board decides to grant the variance that the buffering, the landscaping, the imagery that we see on Josh Landscaping, either, like buffering, they look like arbor vitae to me, but some kind of buffering that's like that you're okay with as a condition to the variance?

Mr. Carletta – Yeah. Absolutely. Again, we're trying to make this as private as possible.

Chairman Reinhardt – Suzy, anybody listening today?

Ms. Mandrino – There are no comments and there's three watching.

Chairman Reinhardt – What's your time frame Michael on getting this done?

Mr. Carletta – We haven't put a deposit down on the hot tub yet, that was pending this call. From what all updates that I have from the hot tub place they said that it's going to be an August delivery, so we're going to be pouring the pad in the next couple weeks and start working on the retaining walls and then I'd

like to have everything all buttoned up by the end of August would be a target, but again that's based off of delivery from the spa itself.

Chairman Reinhardt – Usually what we do and I asked who's watching is certainly public comments are important. We have two letters, or it looks like two emails from neighbors that are not opposed to this, so that's good in your favor. But when we have some people this is a public hearing when we know there are people listening what we have frequently done is put a pause on it and give them an opportunity if they do, to submit letters for or against or some type of comments. So I'm a bit reluctant to bring a motion today whether to grant or deny. I think it looks like it's going in your favor. Matt, what do you think about that?

Mr. Nearpass – To be honest I think on an application like this, in my opinion if there was going to be any controversy it would have been from the two addresses that have already chimed in on it. I'm fine either way you want to go with it, but I'm conformable making a decision tonight as well based on the information that we have.

Chairman Reinhardt – Sarah, what do you think about that?

Ms. Mitchell – I agree with Matt. I'm fine with making a decision tonight. We send out legal notices, signs are posted. People have their chance to speak for or against.

Chairman Reinhardt – Okay. Donna?

Ms. Morley – Ditto. I'm good with it.

Chairman Reinhardt – Okay, Fred you okay with that?

Mr. Salsburg – Yeah, let's vote.

Chairman Reinhardt – Okay, good. Then I'm comfortable enough. Let's move forward. So let's run through the criteria.

First, whether or not 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.

The justification is there are terrain issues. It slopes and also that the neighbors both to the east and west are not opposed to it. Moving that hot tub in a different location appears to be cost prohibitive because it's going to require the home owner to pour more concrete.

Anyone want to add anything else 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.

Same justification as the first. Primarily the slope of the land creates very difficult for the applicant to place this hot tub spa other than where it currently is.

Anyone want to add anything else to the second criteria?

The requested area variance is not substantial. Fifteen feet is required. They are looking for five feet, so it would be ten feet from the east lot line. Board good with that? Justification good, okay?

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

I'm not seeing how the placement of the hot tub would create any kind of physical or environmental conditions to the neighborhood. Board okay with that?

Seeing none is good. The alleged difficulty is self-created. The consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

Lastly I believe the board is going to be comfortable with putting a condition on this that the proposed landscaping, while it doesn't have to be exactly as what Josh Landscaping, at least that one slide I'm looking at is, but sufficient buffering around the hot tub both to the east side and the street side that would make it the south?

Mr. Carletta – north.

Chairman Reinhardt – North side, thank you. The north and the east. Any other conditions, thoughts on that? We're all good? Alright. Then I would entertain a motion for approval.

Mr. Nearpass – I'll motion to approve.

Chairman Reinhardt – Alright, Matt. Thank you. Second?

Ms. Morley – I'll second it.

Chairman Reinhardt – Thank you, Donna.

All in favor (Aye). Any opposed? Hearing none. Congratulations, Michael. Enjoy your hot tub.

Mr. Carletta – Thank you. I appreciate everybody's time. Really do.

Chairman Reinhardt – You're very welcome. Great presentation. Good slides. Thanks so much for your efforts.

Mr. Carletta – Okay. Great. Good to know. Thank you everybody. Have a great night.

Chairman Reinhardt – Thank you, you too.

RESOLUTION:

6757 Aldridge Road, Area Variance
Appl: 11-Z-2021

At a regular meeting of the Town of Victor Zoning Board of Appeals held on May 17, 2021 the following resolution was adopted:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on April 28, 2021 from Michael Carletta, 6757 Aldridge Road, Victor, NY requesting a five foot area variance resulting in a 10 foot setback to install a hot tub, whereas per §211-20C of the Town of Victor Code, accessory structures are required to be located a minimum of 15 feet from the side lot lines;

WHEREAS, said application was referred by Al Benedict, Code Enforcement Officer of the Town of

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Victor on the basis of the variance requested to the Town of Victor Code; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on May 9, 2021 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act and therefore does not require further action; and,

WHEREAS, a Public Hearing was held on May 17, 2021 at which time two residents sent emails in favor of the application,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings:

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

Justification: There are terrain issues; it slopes. The neighbors both to the east and west are not opposed to the project. Moving the hot tub to a different location appears to be cost prohibitive. It would require the home owner to pour more concrete.

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

Justification: As with the first criteria, it is primarily because the slope of the land makes it very difficult for the applicant to place the hot tub/spa in another location.

3. The requested area variance is not substantial.

Justification: Fifteen feet is required. The applicant is looking for five feet, making it ten feet from the east lot line.

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

Justification: Nothing presented shows the placement of the hot tub would create any kind of physical or environmental conditions to the neighborhood.

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

On a motion made by Mr. Matt Nearpass and seconded by Ms. Donna Morley:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application received from Michael Carletta, 6757 Aldridge Road, Victor, NY requesting a five foot area variance resulting in a 10 foot setback to install a hot tub, whereas per §211-20C of the Town of Victor Code, accessory structures are required to be located a minimum of 15 feet from the side lot lines; BE APPROVED.

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

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1. Per Town of Victor Code §211-8C(5)(a, b) this variance expires if a permit or extension is not granted within one year from the approval of subject variance.
2. The proposed landscaping, while it doesn't have to be exactly as Josh Landscape proposed, should contain sufficient buffering around the hot tub both to the east and north side.

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

Michael Reinhardt	Aye
Mathew Nearpass	Aye
Sarah Mitchell	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Adopted: 5 Ayes, 0 Nays

Chairman Reinhardt – Does anyone have anything else for the board? I think we're all good? I think there's a little bit of sunshine left. Go out and enjoy it. We'll have a motion to adjourn.

It was unanimously decided to adjourn the meeting at 7:25pm.