

**A regular meeting of the Village of Victor Zoning Board of Appeals (ZBA) was held on Wednesday, July 15, 2020 at the Village Hall, 60 East Main Street.**

**MEMBERS PRESENT:** Chairperson Sean Sanderson  
Vice Chairperson Brian Pancoast  
Member David Chalupa  
Member Brendon Crossing  
Zoning Clerk Roseanne Turner-Adams

**MEMBERS ABSENT:** Member Tim Stone

**OTHERS PRESENT:** Emily Georger O'Brien, Daniel O'Brien, Bonnie Rhodes, Larry Rhodes, Bill Murphy

The ZBA meeting was called to order by Chairperson Sean Sanderson at 7:00 pm.

Salute to the Flag

**Resolution #05-20ZBA**

**Acceptance of Minutes**

On a motion made by Brendon Crossing, seconded by Brian Pancoast, the following resolution was ADOPTED 4 AYES 0 NAYS

**Resolved** to accept the minutes dated June 17, 2020.

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**10 Winston Drive/William Murphy**

**Area Variance-Shed**

Chairperson Sanderson read the legal notice into the record:

"A public hearing will be held before the Village of Victor Zoning Board of Appeals on Wednesday, July 15, at 7:00 p.m., in the Village Hall, 60 East Main Street, Victor, New York, to consider:

- 1.) The application of William Murphy, 10 Winston Drive, for an area variance to the Village of Victor Zoning Code to build a 16' x 20' shed at 10 Winston Drive.  
The applicant is proposing the shed to be placed 3 feet from the East property line.  
Chapter 170-11.G(1)(b) requires a side setback of 10 feet:  
The applicant is seeking an area variance to reduce the accessory building East side setback to 3 feet which is a 7 ft. difference from Code compliance.  
Sean Sanderson, Chairperson  
Village of Victor Zoning Board of Appeals"

Chairperson Sanderson stated that a referral from the Code Enforcement Officer was received which reiterates the same thing as the legal notice, that the applicant is proposing to install a 16' x 20' shed and the referral will be on record.

Mr. Sanderson stated that Mr. Murphy has two sheds in which one will be taken down to make room for a bigger shed. Mr. Sanderson asked Mr. Murphy to give an overview of his proposal. Mr. Murphy stated that he purchased a larger tractor in order to help elderly neighbors plow their driveways in the winter so he could use a larger shed to store it and also could use more storage space. Mr. Sanderson asked Mr. Murphy how far the current sheds are off the property line. Mr. Murphy stated that they are about 18" from the property line and they have both been there for 25-30 years. Mr. Murphy explained that when he moved in he replaced a metal shed with the wooden ones and just placed them in the same location. Mr. Sanderson asked Mr. Murphy when he moved in. Mr. Murphy stated that he moved in in 1985. Mr. Sanderson asked Mr. Murphy if he constructed both of the current sheds. Mr. Murphy stated that he did build both sheds but at that time he didn't need a permit. Mr. Sanderson stated that he probably technically did need a permit back then but they were a little more lax. Mr. Sanderson stated that Mr. Chalupa had a question about the shed that is staying which is the 12' x 12' shed. Mr. Chalupa stated that it looks bigger than 12' x 12' to him. Mr. Crossing stated that he measured it and it is in fact 12' x 12'. Mr. Sanderson stated that the shed that is staying is pre-existing, non-conforming and does not need to be addressed per the Code Enforcement Officer.

Mr. Sanderson stated that the only thing the ZBA is hearing today is the removal of the small shed and building a new shed that is 3' from the property line. Mr. Crossing stated that the thing he is struggling with is that clearly the shed that is staying is pre-existing, non-conforming and is allowed to remain but the code says that the new shed has to be 10' from the property line. Mr. Crossing stated that the proposed shed is very large at 16' x 20' and is more like the size of a garage. Mr. Crossing asked Mr. Murphy what he plans to use the shed for. Mr. Murphy explained that the tractor he purchased has attachments that right now are being stored in a friend's barn and he would like the shed to store the tractor and attachments. Mr. Crossing asked Mr. Murphy what he does for a day job. Mr. Murphy stated that he is in sales. Mr. Pancoast asked Mr. Murphy if he has a landscaping business. Mr. Murphy said "no". Mr. Sanderson stated that neither shed can be seen from the street. Mr. Crossing stated that you will be able to see the proposed shed if it is built. Mr. Murphy stated that you might be able to see a little of it. Mr. Crossing asked how tall the shed will be as it is not mentioned in the application. Mr. Murphy stated that the shed can only be 12' tall by code so it will actually be hidden by the other shed. Mr. Chalupa asked how tall the other shed is. Mr. Murphy stated that the other shed is 13' tall. Mr. Crossing asked Mr. Murphy if he will be building the shed himself or buying it. Mr. Murphy stated that he will build it himself and it has to go in the proposed location because it is the only flat spot that doesn't collect water. Mr. Sanderson stated that it looks flat from the aerial photograph but there is really some slope to the yard and can see where water would collect.

Mr. Crossing asked if lot coverage was looked at to see if the addition of the new shed would be below 30% lot coverage. Mr. Sanderson stated that he was told by Tim Stone or Marty Avila that lot coverage was not an issue.

Mr. Pancoast stated that the current sheds are 18" from the lot line and asked if the proposed shed will be moved in 1.5'. Mr. Murphy stated that he would like to build the new shed 3' from the lot line. Mr. Chalupa asked which side the door will be on the shed. Mr. Murphy stated that the door will be on the same side as the provided picture. Mr. Chalupa asked what the problem would be to push the shed a few more feet away from the lot line. Mr. Murphy stated that he doesn't want a huge shed in the middle of his back yard.

Mr. Crossing stated that one of the Zoning Board's challenges is to go through a balancing test and determine whether the request is substantial. Mr. Crossing explained that 3' compared to the requirement of 10' is substantial. Mr. Crossing stated that every little bit matters and asked Mr. Murphy how he came up with 3'. Mr. Murphy stated that the Code Enforcement Officer told him he would have to get a variance to get it to 3' which is better than 10'. Mr. Sanderson asked Mr. Murphy if he would consider getting a smaller shed because the square footage determines how far away from the lot line you can be. Mr. Sanderson explained that if the shed were 180 square foot or less the setback would be 5' and would not be as substantial in his opinion.

Mr. Pancoast asked Mr. Murphy what kind of tractor he bought. Mr. Murphy stated that it is a Kubota. Mr. Pancoast asked if it is a standard lawn tractor or if it has a front loader. Mr. Murphy stated that it has a front loader, lawn mower and snow plow and is 20'.

Mr. Crossing stated that it is clear that the shed cannot be used for business purposes and that Mr. Murphy is in sales but is struggling with seeing the trailer on the site. Mr. Crossing stated that Mr. Murphy is calling it a shed but it is more like a garage. Mr. Murphy stated that it is not going to be used for business purposes and is more for his Son's hobby of garden tractor pulling which can be loud.

### ***Mr. Sanderson opened the public hearing***

#### **Bonnie Rhodes- 4 Winston Drive**

Ms. Rhodes stated she doesn't have a problem with the shed itself but she does have a problem with what will be in it and the noise that will come out of it. Ms. Rhodes stated that the tractors sound like stock cars and in the middle of the evening they get them rolling and it sounds like someone is having a stock car race in the neighborhood and then the yelling and profanities start to go over the sound of the tractors. Ms. Rhodes stated that it is really not a pleasant situation because now there are new families moving in with small children. Ms. Rhodes stated that she doesn't have a problem with the building but the screaming and noise sounds like a circus.

Mr. Sanderson stated that he appreciates Ms. Rhodes voicing her opinion but that the Zoning Board cannot address the noise. Ms. Rhodes asked if the Zoning Board can

control what goes on in the shed. Mr. Sanderson stated that it cannot be a business and there are some restrictions but the Zoning Board doesn't have the authority to tell them they cannot have the tractor or participate in tractor pulls. Mr. Sanderson stated that there is Code Enforcement and other avenues for that but the Zoning Board is not one of them. Ms. Rhodes stated that it is unfortunate.

**Larry Rhodes- 4 Winston Drive**

Mr. Rhodes stated that Mr. Crossing had a very good point about the trailer on site because Mr. Murphy has admitted to storing stuff for his business. Mr. Rhodes explained that he doesn't understand the need to have a tractor that big to plow snow in a neighbor's driveway as the driveways in Victorwood are easy to shovel and don't need a Kubota to squeeze into a garage to plow snow. Mr. Rhodes stated that he is very concerned that the garage will be used for business. Mr. Rhodes explained that Mr. Murphy's Son worked at a lawn mower shop doing repairs and wonders what prevents them from using the garage to fix tractors to pull for other people. Mr. Rhodes stated that they should put the garage at the end of the driveway rather than so close to the property lines.

Mr. Sanderson read two letters that were received into the record:

***Terrance S. Goodman- 13 Winston Drive***

*Letter dated June 11, 2020 "To whom it may concern, Let it be known that I, Terrance S. Goodman residing at 13 Winston Drive Victor, NY have no objection to Mr. William Murphy's proposal of erecting a shed in his rear yard."*

***Walter Riccobene- 12 Winston Drive***

*"I give William Murphy permission to build a shed, my name is Walter Riccobene."*

***Mr. Sanderson closed the public hearing***

***2 persons submitted letters in favor of the application and 2 persons spoke against the application.***

Mr. Crossing asked Mr. Murphy to explain the lawn mower pulling and asked if it is a hobby and whether prizes are collected. Mr. Murphy stated that he would like to apologize to Mr. & Mrs. Rhodes about the noise and thinks it is very seldom that it is after 9pm but that his Son is loud so he can understand and will have a conversation with his Son about it. Mr. Murphy explained that it is a club and this year because all of the County Fairs are cancelled there are no pulls. Mr. Murphy stated that it is a hobby which is a bit like the dirt races, you spend a lot of money but you don't make any money. Mr. Crossing asked Mr. Murphy if he set up an LLC for expenses. Mr. Murphy said "no" and added that his Son doesn't work for a lawn mower company but drives truck for a living.

Mr. Crossing asked you can get the proper pitch of the roof if the shed is 12' high and 16' long. Mr. Murphy said "yes". Mr. Crossing stated that there is a potential drainage issue as the pitch of the roof is sideways.

Mr. Sanderson stated that he just got a new 10x14 shed which is 10' off the property line on both the front and side. Mr. Sanderson explained that the shed is kind of in the middle of his yard but that is what the law says he has to do. Mr. Sanderson stated that he is struggling with the fact that the size of the shed can't be scaled down to fit the code. (*Rear and side: three feet when less than 120 square feet; five feet when between 120 square feet and 180 square feet; 10 feet when greater than 180 square feet.*)

Mr. Sanderson then went through the balancing test with the Zoning Board members

**1. CAN THE BENEFIT SOUGHT BY THE APPLICANT BE ACHIEVED BY OTHER FEASIBLE MEANS?**

*Yes- Unanimous*

**2. WILL GRANTING OF THE VARIANCE PRODUCE AN UNDESIREABLE CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES?**

*No- Brian, Sean, Dave*

*Yes-Brendon*

**3. IS THE REQUESTED VARIANCE SUBSTANTIAL?**

*Yes- Unanimous*

**4. WILL THE VARIANCE HAVE ANY ADVERSE PHYSICAL OR ENVIRONMENTAL EFFECTS ON THE NEIGHBORHOOD OR DISTRICT?**

*Yes-unanimous*

**5. WAS THE ALLEGED DIFFICULTY SELF-CREATED?**

*Yes-unanimous*

Mr. Sanderson explained that the motions are always made in the affirmative and then voted on.

*Discussion as to wording of the resolution*

**Resolution #06-20ZBA**

**10 Winston Drive/William Murphy**

**Area Variance-Shed**

On a motion made by Brendon Crossing, seconded by David Chalupa, the following resolution was **DENIED** 0 AYES 4 NAYS

To grant a variance to allow the construction of a 16'w x 20'l x 12'h shed at 10 Winston Drive. To be located no closer than 3' to the north property line as illustrated in the

provided survey. Pitch of roof to be toward the north and south. To be constructed within 6 months from the date of the resolution.

**WHEREAS**, an application was received by Roseanne Turner-Adams, Zoning Clerk, for the Zoning Board of Appeals, from William Murphy; on June 11, 2020, requesting an area variance to build a 16' x 20' shed to be placed 3 feet from the property line.

**WHEREAS**, said application was denied by the Code Enforcement Officer for the Village of Victor on the basis of Section 170-11.G (1)(b) and,

**WHEREAS**, a Public Hearing was duly called for and was published in "The Daily Messenger" on June 28, 2020; and,

**WHEREAS**, all adjacent property owners were timely notified of the hearing and the purpose of the hearing by mail; and,

**WHEREAS**, a Public Hearing was held on July 15, 2020 at which time all those who desired to be heard were heard and 2 persons submitted letters in favor of the application and 2 persons spoke against the application; and,

**WHEREAS**, after viewing the premises and after reviewing the file and after due deliberation, the Village of Victor Zoning Board of Appeals made the following findings of fact:

- Through much discussion the board asked Mr. Murphy if he would consider building a smaller shed that would require less of a variance or no variance at all.

**NOW, THEREFORE BE IT RESOLVED** that the application of William Murphy to grant a variance to allow the construction of a 16'w x 20'l x 12'h shed at 10 Winston Drive. To be located no closer than 3' to the north property line as illustrated in the provided survey. Pitch of roof to be toward the north and south. To be constructed within 6 months from the date of the resolution **Be Denied.**

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**165 South High Street/Dan & Emily O'Brien**  
**Interpretation – Home Occupation**

Chairperson Sanderson began by stating that the board has been asked to make an interpretation of code 170-3.B for a home occupation in the R-1 zoning district. Mr. Sanderson explained that there is no legal notice or public hearing and we are here strictly to do an interpretation. Mr. Sanderson stated that this is a public meeting and is open to all but this interpretation is not open to the public for discussion. Mr. Sanderson stated that he will give the O'Brien's some room to describe what they are doing but the Zoning Board's job is based on the Code Enforcements referral along with the documents that have been provided.

Mr. Sanderson stated that Mr. O'Brien handed out documents that will be put into the record (Exhibit A). Mr. O'Brien explained what was included in his documents:

- Seasonal Pantry Intro
- Letter from Code Enforcement Officer Doug Scarson
- Picture of barn
- Property drawing
- Application approval letter from Village Planning Board
- Letter to neighbors within 600 feet
- Letter asking for support from Victor Planning Board
- Letter of support from Planning Board Chairperson Meg CHaides
- Daniel O'Brien acceptance letter into Victor Urban Renewal Agency

Mr. O'Brien stated that he is invested in the community and he would like to try and do something that will help Victor.

Mr. Sanderson stated that in an interpretation case the role of the ZBA is to decide whether to uphold or overturn the Code Enforcement Officer's determination. Mr. Sanderson explained that the ZBA must find evidence in the record to support a decision to overturn or affirm the Code Enforcement Officer's determination.

Mr. Sanderson stated that the Zoning Board members were given a copy of the Village of Victor Office of Code Enforcement referral comments along with a business plan for the Seasonal Pantry Virtual Retail & Culinary Event Center. Mr. Sanderson asked if everyone has reviewed these two documents. All ZBA members said "yes". Mr. Sanderson asked if anyone has any questions about those two documents.

Mr. Crossing stated that he would like to complement the Code Enforcement Officer, Martin Avila, as he did a great job articulating the issues in front of the ZBA and it was refreshing to read through everything he had to say and think he did a great job.

Mr. Sanderson asked Mr. O'Brien to explain what is different in his recent packet to what was submitted previously. Mr. Sanderson stated that the letters of support are important. Mr. O'Brien stated that he is just trying to show that he is trying to be open and honest about his vision.

Mr. Crossing stated that in the Code Enforcement Officers referral, he is saying that based on the business plan it is basically a retail establishment. Mr. O'Brien explained that it is virtual which basically means orders can be placed online and delivered. Mr. Crossing stated that he thought that the business plan said there would be 12-20 people per evening attending. Mr. O'Brien stated that it would be in an event space above. Mr. Sanderson stated that an event space is still not an allowed use in the R-1 District. Mr. O'Brien stated that he would like to teach people how to make bread or pasta and then host a dinner with a Finger Lakes wine. Mr. Crossing stated that he is

unclear about the business being virtual or if people will be attending something. Mr. Sanderson stated that he understands that there is virtual retail which is online shopping but separate from that there would be an event space where Mr. O'Brien would like to host 12-20 people three times a week, 132 times a year. Mr. Crossing stated that from the business plan the revenue projection is 20 guests per night, 132 supper clubs. Mr. O'Brien stated that he doesn't know how that information was received by the Code Enforcement Officer as it was a business plan for his investors. Mr. Crossing stated that the year one projections are for 132 supper clubs which are not virtual, or are they. Mr. O'Brien stated "no sir". Mr. O'Brien stated that he thinks what happened is that Kathy Rayburn gave the Code Enforcement Officer the actual business plan that goes to his investors. Mr. Sanderson stated that all of the ZBA members were given a copy of the business plan for the investors as well. Mr. Crossing stated that the Code Enforcement officer said that the proposed business is basically a retail establishment and the business plan makes it sound like it is because people will be in attendance for supper clubs and people will be staying at the bed and breakfast. Mr. Crossing stated that he is trying to understand the impact on the site at 165 South High Street. Mr. O'Brien explained that the impact will be traffic, possible cars in and out and that is one thing that Code Enforcement said. Mr. Crossing stated that one other big point that the Code Enforcement Officer brought up was that people will be hired such as cook, chef, servers. Mr. O'Brien said "no" to give you an overview, I ran a 12 seat supper club in Washington D.C. with 3 staff (himself, a server and another person). Mr. O'Brien explained that it would not be a big staff. Mr. Chalupa stated that people who do not live there would be hired. Mr. O'Brien said "yes".

Mr. Crossing asked about the bed and breakfast and the renting of a loft. Mr. O'Brien stated that he asked the Code Enforcement Officer if it was something that he could talk about and it is not a bed and breakfast but a loft space that an out-of-town guest can rent but they would have to get breakfast within the community.

Mr. Sanderson stated that he likes the idea of the business but unfortunately based on the business plan and the referral from the Code Enforcement Officer, the proposed business is most similar to a retail establishment/restaurant or bed and breakfast which are non-compliant uses within the R-1 district.

Mr. Sanderson explained that the Zoning Board's job is to determine if it is an allowable use in the R-1 district. Mr. Crossing stated that the challenge the Zoning Board faces is to determine if the proposed business is a compliant with a home occupation.

Mr. Sanderson stated that a retail establishment, restaurant or bed and breakfast are non-compliant uses within the R-1 Zoning District. Mr. Sanderson stated that additionally, the applicant proposes to have a staff of a chef/cook, host/server, and event coordinator which contradicts the definition of a home occupation.

*Mr. Crossing gave examples of a home occupation*

Mr. Crossing asked Mr. O'Brien to spend some time reviewing the Code Enforcement Officer's summary of the definition of a home occupation. Mr. O'Brien stated that he spent about two hours talking to the Code Enforcement Officer and Kathy Rayburn. Mr. Crossing stated that a home occupation is carried on by a member of the family residing in the dwelling unit which means no employees. Mr. Crossing asked Mr. O'Brien to go through the Code Enforcement referral. Mr. Pancoast asked Mr. O'Brien if he lives at the residence. Mr. O'Brien stated that "yes"; he purchased the residence last year and is trying to utilize the bees on the property and to grow food on the property as well as milling his own flour.

Mr. Sanderson stated that like he said before he loves the idea of the proposed supper club but in his opinion based on the Code Enforcement Officer's referral comments and the business plan along with the addition of Mr. O'Brien's other documents the proposed business does not fit the definition of a home occupation. All Zoning Board members unanimously agreed with Mr. Sanderson.

Mr. Sanderson stated that the Zoning Board has considered the intent of the law and finds the Code Enforcement Officer's determination to be accurate that this does not qualify as a home occupation and does not fit the allowable uses and therefore would require a use variance.

#### **ADJOURNMENT**

Meeting was adjourned on motion at 8:01 pm.

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Roseanne Turner-Adams, Minutes Clerk