

A regular meeting of the Village of Victor Zoning Board of Appeals (ZBA) was held on Wednesday, August 19, 2020 at the Village Hall, 60 East Main Street.

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

OTHERS PRESENT: Bill Murphy

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

Salute to the Flag

Resolution #07-20ZBA
Acceptance of Minutes

On a motion made by Brendon Crossing, seconded by Brian Pancoast, the following resolution was ADOPTED 4 AYES 0 NAYS 1 ABSTAIN (Tim Stone)

Resolved to accept the minutes dated July 15, 2020.

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, August 19, 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 15' x 15' shed at 10 Winston Drive.
The applicant is proposing the shed to be placed 5 feet from the property line.
The property is located in the R-2 one family residential zoning district.
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 side setback to 5 feet which is a 5 ft. difference from Code compliance.

Sean Sanderson, Chairperson
Village of Victor Zoning Board of Appeals"

Chairperson Sanderson read the referral from the Code Enforcement Officer into the record:

"The Planning and Building Department has received an application for an Area Variance. The property is located at, 10 Winston Drive. The applicant is proposing to install a 15 foot by 15 foot shed 5 feet from the property line. The parcel is located in the R-2 One Family Residential zoning district. I have reviewed the plans and have the following comments:

I. Pursuant to **§ 170-11.G(1)(b)**, the applicant's shed, which is over 180 square feet, would require a 10-foot setback from North property line.

II. Previously the applicant appeared before the Zoning Board requesting a variance for a 16 foot by 20 foot shed only 3 feet from the property line. The current variance request has been deemed, by the Code Enforcement Officer, as being substantially different from the earlier request (30% reduction in size and 20% reduction is requested setback variance).

Respectfully submitted,
Martin Avila, NYS-CEO, CFM
Code Enforcement Officer"

Mr. Sanderson stated that the board is familiar with this project as it was denied in July and asked Mr. Murphy to explain why he decided to reduce the size of the shed and move it further away from the lot line in the new application. Mr. Murphy stated that it seemed like the size of the shed was the issue to the Zoning board because his neighbors did not have any issues with the shed. Mr. Murphy explained that he thought that if he proposed building a smaller shed and putting the shed further away that maybe he would have a shot at an approval. Mr. Sanderson stated that the board appreciates Mr. Murphy coming back. Mr. Sanderson asked Mr. Crossing if he did the math on the 15' x 15' shed. Mr. Crossing stated that it is 225 square feet. Mr. Stone stated that the previously proposed shed was 320 square feet which is a difference of 95 square feet.

Mr. Sanderson stated that the code requires a 5' setback when between 120 square feet and 180 square feet.

Mr. Stone asked how far the existing structure is from the property line, not the one that is being torn down but the one that will remain. Mr. Murphy stated that it is 18" to 20" from the property line. Mr. Crossing stated that it is a pre-existing, non-conforming structure. Mr. Sanderson stated that the remaining shed can stay.

Mr. Sanderson stated that the Code Enforcement Officer wrote in his referral that the new proposal is substantially different than the previous proposal. Mr. Sanderson asked the board if they want to continue to go down the path at this size shed. Mr. Crossing asked Mr. Murphy why he can't move the shed 10' from the lot line. Mr. Murphy explained that it would be in the middle of his yard and that he would have to bring in a lot of fill to bring it out 10'. Mr. Murphy explained that he has a Grandchild that likes to play volleyball in the yard so he would like to keep as much of his yard open as possible. Mr. Crossing asked Mr. Murphy if he could go 9' or 8' from the lot line. Mr. Murphy explained that he took a walk around the neighborhood and took pictures of buildings that are way bigger than what he proposes to build and are closer to the lot line which he shared with the board. (Exhibit A) Mr. Murphy asked how these are

allowed. Mr. Sanderson stated that they either have a variance or are pre-existing, non-conforming. Mr. Murphy stated that he thought this hearing is about getting a variance. Mr. Sanderson stated that he just put up a 10' x 14' shed and put it 10' from the property line and it is huge. Mr. Sanderson explained that he has his lawn tractor and the kids bikes plus plenty of extra room. Mr. Sanderson stated that if Mr. Murphy were to put up a 10' x 14' shed 5' from the property line he wouldn't require a variance. Mr. Chalupa stated that Mr. Murphy could put up a 10' x 18' or 12' x 15' shed without a variance. Mr. Murphy explained that it is the configuration that would not work because he would have to get his tractor in from one of the long ends which would be obstructed. Mr. Murphy stated that he would like the shed to be 15' so it is big enough for the tractor and loader.

Discussion about configuration and different size sheds

Mr. Stone stated that Mr. Murphy has made an application and the Zoning Board is required to address it. Mr. Sanderson stated that he does not want Mr. Murphy to have to keep submitting different applications with different sized sheds and paying the fees until the shed is approved. Mr. Stone stated that the balancing test will ask questions such as whether the shed could be located on another area on the property without needing a variance. Mr. Stone stated that there will be a 3' or 4' difference from the back of the existing garage to the back of the proposed second garage. Mr. Murphy agreed. Mr. Stone asked Mr. Murphy if he could bump that up a little bit more to make it conform. Mr. Murphy explained that the center of his back yard is a swale, so the water runs through there. Mr. Sanderson asked Mr. Murphy if 15' x 15' is the smallest shed that he would need. Mr. Murphy said "yes" and asked what size shed would be approved. Mr. Crossing stated that if he were to build a 15' x 12' shed he would not need a variance.

Mr. Stone stated that he read the minutes from last month and asked if the board is concerned with the use of the shed regardless of the size.

Mr. Crossing stated that after much discussion it appeared not to be a business use. Mr. Crossing stated that Mr. Murphy derives no income from tractor pulling but that some neighbors were concerned with the loudness of the tractors.

Mr. Sanderson opened the public hearing

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

Walter Riccobene- 12 Winston Drive

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

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."

Mr. Sanderson closed the public hearing

2 persons submitted letters in favor of the application and 0 persons spoke against the application.

Mr. Chalupa asked if the pitch or direction of the roof has changed from the last proposal. Mr. Murphy said "no". Mr. Crossing asked what the pitch was. Mr. Chalupa stated that it was toward the north property line. Mr. Murphy stated that he put drainage tile in from that side so that water would go down to the swale with the normal flow. Mr. Crossing asked if the shed would have gutters. Mr. Murphy stated that he will put gutters on the front side near the door going in. Mr. Crossing stated that one thing the board is worried about is adversely affecting the neighbor. Mr. Crossing explained that if you build a big structure that collects a lot of rain water and you violate the setback requirement the water will be dumped on the adjacent property and that is one thing the Zoning Board wants mitigated and one of the reasons for setback requirements.

Mr. Sanderson asked what size is the shed that will be replaced. Mr. Murphy stated that it is 10' x 12'.

Mr. Pancoast asked if the front of that shed lines up with the one next to it. Mr. Murphy said "yes". Mr. Crossing stated that he thinks it would be more aesthetically pleasing to have the two sheds line up.

Mr. Crossing stated that the biggest thing he is struggling with is that this can be achieved by other feasible means.

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- Unanimous

3. IS THE REQUESTED VARIANCE SUBSTANTIAL?

Yes- Unanimous

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

No-unanimous

5. WAS THE ALLEGED DIFFICULTY SELF-CREATED?

Yes-unanimous

Mr. Sanderson stated that it looks like the proposal does not pass the balancing test but that the board must vote.

Mr. Crossing stated that it is not up to the ZBA to give recommendations on what we would approve. Mr. Crossing asked Mr. Murphy if he is prepared to modify his proposal based on the ZBA's concerns. Mr. Murphy stated that he could come up 18" more if that would help.

Mr. Stone stated that if the ZBA is ok with one of the tests which is really important being the character of the neighborhood and that he is all for aesthetics and what works for the applicant and would rather see something that lines up. Mr. Stone stated that he is concerned with runoff and the impact on the neighbor and his whole point is that how important is arguing over 18" for one part of the balancing test (is the variance substantial?) to the whole puzzle.

Mr. Crossing stated that anything that can be done to get as close to what is required helps considerably.

Mr. Murphy considered different sized sheds with the board

Mr. Stone asked what changing the size would accomplish. Mr. Crossing stated that a 15' x 15' shed is a very large shed. Mr. Murphy asked if he could put two 15' x 12' sheds side by side without a variance. Mr. Crossing said "yes, without even talking to the ZBA".

Mr. Stone stated that it looks like the neighbor has a shed directly behind the proposed shed. Mr. Murphy stated that the neighbor has two sheds. Mr. Stone explained that Mr. Murphy is putting up a larger shed in place of a shed that backs up to another shed, not a garden or something that would be impacted. Mr. Stone stated that in his opinion he is at the point that the ZBA should just vote on what is proposed.

Mr. Chalupa asked what the height of the proposed shed is. Mr. Murphy stated that it would be 12' high. Mr. Chalupa asked how tall the remaining shed is. Mr. Murphy stated that the current shed is 12' high. Mr. Chalupa stated that changing the size of the shed from 15' x 15' to 15' x 14' is useless because it will not look much different at the same height.

Mr. Crossing stated that if the ZBA votes now, that is the determination, but should Mr. Murphy be able to modify his proposal now if he chooses. Mr. Sanderson agreed.

Discussion amongst board and Mr. Murphy about different size structures and distance from lot line

Mr. Sanderson stated that Mr. Murphy has come back and proposed to reduce the size of the shed and made it further from the lot line therefore is less substantial. Mr. Sanderson stated that the proposed shed will be hidden by the existing shed and will be 15' x 15' and 5' off the property line. Mr. Sanderson stated that Mr. Murphy said he would be able to fit everything he needs in a 15' x 15' shed. Mr. Sanderson stated that this new proposal is close to what would be allowed and the benefit to the applicant outweighs the little or no detriment to the neighborhood. Mr. Sanderson stated that he is comfortable making a motion based on the new proposal but that it sounds like Mr. Crossing would like to see the shed further from the lot line. Mr. Crossing stated that we agree that Mr. Murphy's proposal failed 3 of the 5 balancing tests. Mr. Sanderson agreed. Mr. Stone stated that the 3 tests that failed were self-created, substantial and other feasible means.

Mr. Sanderson stated that Mr. Murphy said he would be willing to take 18" – 2' off his number and asked Mr. Crossing how that would affect his vote.

Mr. Crossing stated that he does not think it is appropriate to debate where his line is whether 10%, 20% or 30%. Mr. Crossing explained that he is not comfortable doing that and he is willing to entertain his application and then judge the merits of that application. Mr. Chalupa stated that he agrees with Mr. Sanderson and that moving the shed 2 feet is not going to change the project much so the board should vote on what was proposed. Mr. Crossing disagreed. Mr. Stone stated that there are arguments for the failures of the balancing tests.

Mr. Stone went through the balancing test results

Mr. Stone stated that agrees that the board should vote on what was proposed.

Mr. Pancoast stated that the board is not balancing the five points and that if it fails three tests it leans toward no but are considering this information when balancing the benefit to the applicant versus the detriment to the neighborhood. Mr. Crossing stated that the applicant could fail one test and the board could all vote no. Mr. Pancoast stated that the applicant could fail them all and the board could vote yes.

Discussion as to wording of the resolution

**Resolution #08-20ZBA
10 Winston Drive/William Murphy
Area Variance-Shed**

On a motion made by Brendon Crossing, seconded by David Chalupa, the following resolution was **APPROVED** 4 AYES 1 NAYS (Brendon Crossing)

To grant a variance to allow the construction of a 15'w x 15'l x 12'h shed at 10 Winston Drive. To be located no closer than 5' to the north property line as illustrated in the provided survey. Pitch of roof to be toward the east and west. 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 July 22, 2020, requesting an area variance to build a 15' x 15' shed to be placed 5 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 August 2, 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 August 19, 2020 at which time all those who desired to be heard were heard and 2 persons submitted letters in favor of the application and 0 persons spoke against the application; and,

NOW, THEREFORE BE IT RESOLVED that the application of William Murphy to grant a variance to allow the construction of a 15'w x 15'l x 12'h shed at 10 Winston Drive. To be located no closer than 5' to the north property line as illustrated in the provided survey. Pitch of roof to be toward the east and west. To be constructed within 6 months from the date of the resolution **Be Approved.**

ADJOURNMENT

Meeting was adjourned on motion at 7:52 pm.

Roseanne Turner-Adams, Minutes Clerk