

A regular meeting of the Village of Victor Zoning Board of Appeals (ZBA) was held on Wednesday, September 21, 2022, at the Village Hall, 60 East Main Street.

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

MEMBERS ABSENT: Chairperson Sean Sanderson

OTHERS PRESENT: Sean McAdoo, Linda Tice, Tom Simonds

The ZBA meeting was called to order by Brendon Crossing at 7:00 pm.

Salute to the Flag

Resolution #03-22ZBA

Acceptance of Minutes

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

Resolved to accept the minutes dated January 19, 2022.

Victor Fire Department

34 Maple Avenue-Interpretation for 84 Maple Fireman's Field

Mr. Brendon Crossing stated that the board has been asked to make an interpretation of a variance that was granted to the Victor Fire Department in 1976. Mr. Sean McAdoo of the Victor Fire Department stated that he is representing Linda Tice, President of Victor Fire Department Inc. along with Tom Simonds, one of the directors of Victor Fire Department Inc. Mr. McAdoo explained that Victor Fire Department Inc. is independent from the fire district, and they are actually two different entities. Mr. McAdoo stated that the firefighters are automatic members of the incorporation, and that Victor Fire Department Inc. owns 5 West Main Street and the fireman's field at 84 Maple Ave.

Mr. McAdoo explained that their intent is to expand the barn that was built in 2017 that is currently at Fireman's Field. Mr. McAdoo stated that Victor Fire Department Inc. has owned 5 West Main Street which is the original Firehouse built in 1910 for about 20 years. Mr. McAdoo stated that it is used to store the Buffalo (1934 Fire Truck) and a lounge upstairs for the firefighters to hang out. Mr. McAdoo explained that 5 West Main has not been used a lot so it has not been maintained as well as they would like and some people locally have inquired about purchasing the building, so membership has

agreed by vote that they pursue that path. Mr. McAdoo stated that the logical thing, since they own Fireman's Field, would be to add an extension onto the existing barn to duplicate the 5 West Main space so that the Buffalo can be housed there along with memorabilia and have a place where members can hang out upstairs. Mr. McAdoo stated that they also talked about adding a pavilion that could be rented out to the public.

Mr. McAdoo stated that the reason they are here today is because the property is zoned Residential, however in 1976 a use permit was granted to allow training, recreation and carnival use with some contingencies.

1. Any site preparation be subject to the approval of the D.E.C. as to the effect on surface drainage.
2. The Army Corp. of Engineers be approached as consultants as to the best way to comply with any D.E.C. rulings or recommendations.
3. Any permanent structures be subject to variance approval for each structure.
4. Permanent fencing will be provided to limit access to the subject property lines bordering Maple Ave. residences. Fence to be a minimum of 6' and of chain link type construction.
5. A permit be applied for each, and every carnival held on the site to give adjacent landowners an opportunity to express their dissatisfaction or concurrence with the operation of the carnival.

Mr. McAdoo stated that they stopped doing carnivals in the early 1980's but they did hold a music fest for three years but mostly used the property for parking at various events such as the Ganondagan Festival and Hang Around Victor Day. Mr. McAdoo stated that Code Enforcement Officer Todd Smith wasn't sure that the proposal to add onto the existing barn or to rent it out would be a consistent use.

Mr. McAdoo stated that he would like to ask the Zoning Board for their opinion whether this is a consistent use from the original 1976 variance. Mr. McAdoo stated that their argument is very simple, and that the property has consistently been used for recreation, carnivals/festivals and rented out to individuals such as the Senior Class a couple of years ago, softball and little league when they couldn't use a field at the school during Covid. Mr. McAdoo stated that the property is private, but it has been available. Mr. McAdoo asked the board members for their opinions on whether what he just described is consistent with the variance from 1976. Mr. McAdoo explained that in 1976 there was no Planning Board so the clause about any permanent structures be subject to variance approval for each structure is dated. Mr. McAdoo stated that today they intend to go to the Planning Board for a site plan which would be the chance for the public to weigh in.

Mr. Crossing asked when the existing barn was constructed. Mr. McAdoo stated that there are actually two barns on the property, one is pre-existing that straddles the property line used for storage which became unsafe, so they decided to build a new

barn in 2017 which the Code Enforcement Officer gave them a permit to build and chose not to send them to get site plan approval from the Planning Board.

Mr. Crossing asked Mr. McAdoo if the proposed structure would be permanent. Mr. McAdoo explained that it would be permanent and would have a foundation and electricity and hopefully have bathrooms.

Mr. Stone asked what the Fire Department wanted to do in 1976 which prompted them to get the variance. Mr. McAdoo stated that the carnival was originally at 160 School Street, and the Fire Dept. wanted to have a better location and when 8 acres became available at 84 Maple Ave. it became an opportunity to move the carnival grounds and purchase the property. Mr. McAdoo explained that the property is zoned residential, and the Fire Department had to get approvals to use the property for training, recreation and carnival use.

Mr. Crossing stated that the key for the Zoning Board to consider is that the property is to be used for training, recreation and carnival use. Mr. McAdoo stated that his interpretation is that they would like to expand on the variance a little bit, but it is a natural evolution of recreation and carnivals. Mr. Crossing stated that carnivals are a little different today than they were in the 1970's.

Mr. Stone asked the approximate footage of the existing structure and how many square feet are being proposed for the addition. Mr. McAdoo stated that the structure built in 2017 is approximately 5,000 square feet and they will roughly triple the size if they go for the full proposal. Mr. McAdoo explained that they would add 5,000 square feet to include room for storage and a lounge and another 5,000 square feet for rental. Mr. Chalupa asked if the rentals would be day rentals or overnight rentals. Mr. McAdoo stated that the rentals would be days and evenings, no overnights.

Mr. Crossing asked Mr. McAdoo how he argues that this would not be a permanent structure because the variance clearly says any permanent structure be subject to variance approval. Mr. McAdoo stated that he is not arguing that it is not a permanent structure, it is a permanent structure, but his argument is that because site plan approval exists, the site plan approval becomes the public conversation.

Mr. Pancoast stated that the next step would be obtaining approval to build the building and what the Zoning Board has to decide is if the Fire Departments intent of the building is used for training, recreation or carnival versus creating a rental in the Village.

Discussion amongst the Zoning Board members on the definition of recreation

Mr. McAdoo stated that if the Zoning Board is asking the Fire Department to come back for a new variance it would have to be a use variance and would not pass the means

test because it is not financially viable because they are a not-for-profit corporation. Mr. McAdoo explained that if the Zoning Board pushed for a use variance it is dead at that point so he would rather see if the 1976 variance can be amended.

Mr. McAdoo explained that there are two parts; bringing the 5 West Main use to another building and the potential second phase would be renting out for a fee.

Mr. Crossing asked if the Village Attorney was consulted. Mr. McAdoo stated that Code Enforcement reached out to him, and he agreed that this case should come before the Zoning Board.

Discussion amongst Zoning Board members about variance

Mr. Stone stated that he understands what the Fire Department is trying to do in terms of expanding the use because it seems like a natural progression but that he has concerns because neighbors may have not signed up for family reunions in their back yard. Mr. Stone explained that it really doesn't matter what the definition of recreation is because #3 of the variance states that any permanent structures be subject to variance approval for each structure. Mr. McAdoo stated that amending the 1976 variance would be appropriate use.

Mr. Chalupa stated that amending the existing variance would contradict the variance that has already been issued. Mr. McAdoo stated that the Zoning Board has the right by vote to amend any variance as long as it is majority opinion. Mr. Chalupa stated that it can be amended but he is not going to contradict it because building a permanent structure would contradict it without a new variance. Mr. Stone stated that applying for a use variance gives the Fire Department the opportunity to go after expanding and defining some of the conditions based on 2022 codes. Mr. Stone stated that the Zoning Board cannot expand or change the definition of recreation without the Fire Department applying for a use variance.

Mr. McAdoo stated that he is trying to decide which path the Zoning Board would like the Fire Department to take. Mr. Crossing stated that when he first reviewed the application, he was a little disappointed about the lack information of what was going to be built or what was contemplated because the application stated that it would be a small structure for Victor Fire and community recreational use. Mr. Crossing explained that from what he is hearing, a 10,000 square foot addition is not small.

Mr. Crossing stated that based on what the application is proposing it does need to come back to the Zoning Board for a use variance. Mr. McAdoo asked whether the variance can be amended or if a new variance would need to be applied for. Mr. Pancoast stated that back in 1976 there was no Planning Board, and everything came through the ZBA. Mr. Crossing explained that the property is zoned R2, and they need to request a use variance to do what they are proposing. Mr. McAdoo stated that there

is a permitted use in the R1 that does say public parks, playgrounds and recreational areas operated by the municipality. Mr. Chalupa stated that he did not hear any mention of a permanent structure in that statement. Mr. Crossing stated that the property in question is in R2, not R1. Mr. McAdoo explained that all uses permitted in R1 pertain to R2 as well. Mr. McAdoo stated that if the Fire Department were a municipality, which they are symbiotic to, it would be a no brainer but there is a gray area. Mr. Crossing stated that he agrees but not regarding the rental piece of the proposal. Mr. McAdoo compared the proposal to the municipal park, which is run by a municipality, so this clause gave them the right to have a rental.

Mr. Stone stated that what has been described as an expanded use, the proposed public rental and taking in of income, would require a use variance. Mr. McAdoo stated that there are two phases to the proposal, and it sounds like the second phase is the one that the Zoning Board is most concerned with and that the idea of renting out for profit makes the ZBA nervous. Mr. McAdoo asked if the Fire Department doesn't go to phase 2, is the addition of a building to house the original fire truck and the lounge for members only consistent with the variance. Mr. McAdoo stated that if that is the concern, they can take phase 2 off the table. Mr. Stone stated that it sounds more consistent subject to a use variance approval.

Mr. Crossing stated that the Fire Department is here for an interpretation and is asking whether what is being proposed needs to come before the Zoning Board. Mr. McAdoo asked whether the ZBA would like them to amend the 1976 variance or to start fresh because they would both be approached differently.

Mr. Stone stated that it seems like the Fire Department has an advantage because training, recreation and carnival uses are pre-approved subject to a use variance. Mr. Crossing stated that the public should be able to comment on what is being proposed. Mr. Crossing explained that neighbors mean a lot to him, and he would like to hear what people have to say about what is being proposed. Mr. Crossing asked Mr. McAdoo is he has spoken to the Planning Board. Mr. McAdoo stated that he cannot until this portion is figured out first because you can't have one board say yes and one board say no. Mr. McAdoo stated that the Code Enforcement Officer already made his determination that they would go before the Zoning Board first.

Discussion regarding size of property

Mr. Crossing stated that he would like to go on record to say thank you to the Fire Department for their service and what they do is really appreciated and extremely valuable.

Mr. McAdoo stated that the ZBA wants the Fire Department to start with a fresh variance. Mr. Crossing stated that his perspective is that he would like to hear what the Fire Department wants to do and see plans and to know the details. Mr. Crossing

explains that he would like to hear from the community in order to determine what he thinks. The Zoning Board agreed unanimously.

Discussion regarding festivals vs. potential rental

Mr. Chalupa stated that what is being proposed as a rental would certainly be used more than once or twice a year. Mr. Crossing explained that in the 1970's things were very different and just because the festivals were allowed doesn't mean it was the right thing to do and the ZBA needs to make sure that the use is in compliance with what it is supposed to be.

Mr. Pancoast stated that the current barn is used for storage, not training, recreation or carnival use and wonders how it ever got approved. Mr. Crossing stated that his guess is that it wasn't approved. Mr. McAdoo explained that the Code Officer signed off on it as an auxiliary to those three uses because it was used to store the Fire Department cooker, some training stuff and chairs. Mr. Simonds stated that the original barn was used for carnival storage so if they were still doing carnivals the new building would be used for carnival storage and equipment they use for fundraisers such as the chicken barbeque.

Mr. McAdoo stated that it seems like the proposed addition to the building for rental is what is triggering the concern as there have been no complaints of how the property is being used currently. Mr. Chalupa stated that it could be a concern as it could be rented out every weekend of the summer, which is a lot of traffic.

Mr. Crossing stated that the only knowledge that he had coming into the meeting tonight was the application which had the 1976 variance and all he knew was that a small structure was being proposed. Mr. Crossing explained that he has learned a lot tonight and appreciates all of the commentary but that is all he knew coming into this meeting. Ms. Tice stated that the proposal has not been settled and they are still in discussions, but they knew that before they could move forward with engineering, they needed to make sure that they could do something on the field. Ms. Tice explained that they wanted to come before the ZBA for an interpretation, not necessarily for the ZBA to approve a building but so that they could start the process and then move forward with getting approvals from the Planning Board and so forth.

Mr. Crossing stated that storage for a fundraiser is different than a 10,000 square foot addition that would be rented out to generate income. Mr. Pancoast stated that currently there are three events that might use the property each year versus renting the property out every weekend for family reunions or weddings and how is that going to affect the neighbors. Mr. McAdoo stated that because the process is much better now than it was in the 1970's he was hoping the Planning Board was the right venue as long as the use was consistent from the Zoning Board perspective.

Mr. Stone stated that the hard part for him is that they are trying to put a 2022 definition of recreation on a 1976 definition. Mr. McAdoo stated that is the reason they wanted to see an interpretation from the Zoning Board.

Mr. Crossing stated that since there is no resolution, the clarification of what the Fire Department is looking for is whether the proposal requires a use variance. Mr. McAdoo stated that the 1976 variance did not specify whether it was area or use so they asked for the Zoning Board's interpretation whether they could either amend or have to apply for a use variance.

Mr. Crossing stated that both would require the Fire Department to come back.

Discussion amongst Zoning Board members regarding amending current variance or new variance

Mr. Crossing stated that all Zoning Members agreed that the Fire Department needs to come back in front of the Zoning Board to present their proposal for a use variance.

ADJOURNMENT Meeting was adjourned on motion at 7:49 pm.

Roseanne Turner-Adams, Minutes Clerk