

TOWN OF VICTOR ZONING BOARD OF APPEALS, June 7, 2021

A regular meeting of the Town of Victor Zoning Board of Appeals was held on June 7, 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: Alex Amering, Costich Engineering; Brian Wilkins, Wilkins RV; Al Benedict, Town of Victor code enforcement; Suzy Mandrino, Town of Victor; Kim Reese, ZBA secretary

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

PLEDGE OF ALLEGIANCE

PAST MINUTES:

On motion of Fred Salsburg, seconded by Donna Morley:

RESOLVED, that the minutes of the meeting held on May 17, 2021 BE APPROVED.

Adopted: Ayes 5, Nays 0

PUBLIC HEARING:

1. BLW Properties of Victor, LLC is requesting area variances to the Town of Victor code for construction of a new Wilkins RV showroom at 7447 State Route 96.

§211-30A states no buildings or impervious surface are permitted within 100' of a wetland;  
§211-32A(2)(d)[1][a] states no vehicular parking is permitted within 80' of the road right-of-way  
§211-41H states fences over 2' high shall not be nearer to the road than the principle structure.

The property is zoned Commercial/Lt Industrial and in the Route 96/251 Corridor Overlay District and owned by the applicant.

Chairman Reinhardt – Our application today is the Wilkins RV. There's three pieces to this. Three variances. We'll go through that in a minute. Alex, I'm going to take a guess. Can I call you Alex or do you want Alexander?

Mr. Amering – Alex is great.

Chairman Reinhardt – Alex, okay. I think you know the drill Alex. You've done applications before? (Yes) Okay great, so just real quick. We're going to create a record and we're going to do our best not to talk over each other. We're going to give you plenty of opportunity to make a presentation. The board then will ask questions some more than others, but at the end of the day because, Kim correct me if I'm wrong, this because it's on Route 96, County planning board will review this on June 9. We can't make a determination this cycle. We'll have to do it next cycle.

Now, I had a conversation with Donna, one of our board members. She has a conflict. I believe it is her husband that works for the applicant, so that would cause a conflict of interest. I agree, so Donna, unless you want to say anything else, you need to recuse yourself and that's all you need to do today.

Ms. Morley – I will recuse myself from this application. I'll sign off. Bye guys.

Chairman Reinhardt – Good. Thanks so much. Alex, there are three variances, one being the building improvements are within a hundred feet of the wetlands, another is that no vehicle parking within 80 feet of the right of way and the third deals with the fence being greater than two feet.

I did review the application and there was a nuance that you pointed out, I'm also aware of it, that there is a variance that would apply to the 80 foot right of way and I think back in 1999 there was a variance for 50 feet. Certainly if you want to touch on that that's fine. You'll basically have, if you will two bites at the apple. If you make the application today, let us know whatever you want. And, then we'll get the county planning board recommendations will come back. There's probably going to be some more questions for you. You'll have another opportunity to make the presentation so. If you don't get it today, you'll get it the next cycle. Go ahead. Make your presentation.

Mr. Amering – Great. Thank you again for having us and summarizing the three variances. Already introduced myself, but Alex Amering with Costich Engineering. With me is also Brian Wilkins, the owner of the Wilkins RV franchises. I'll touch more on the technical items and he'll certainly chime in as it relates to the operation. A little history on the project. Obviously, it was the former Ballantyne RV a few years ago, Brian purchased the property. He owns a couple other locations, Bath and Churchville. So a few months ago, Brian approached us and we started looking at some opportunities to make improvements to the site. Obviously, there's some history between the old approvals as Ballantyne and the two separate buildings which is kind of what drove all of this. Right now you have the showroom on the building to the left side of the screen and then the service building more to the south from an operational standpoint that's pretty far from ideal for him. You really want the two buildings together. So we started brainstorming on ways that we could demolish the existing showroom and connect it to the service building. Obviously with that comes new architecture and a lot of other improvements which aren't necessarily before this board, but we did have the opportunity to meet with the planning board and I think what we are proposing was generally pretty well received.

So one of the initial steps we obviously went out and surveyed the entire property. We had a wetland delineation done, which was done in coordination with New York State DEC, because they are state wetlands. We then located the wetlands, which you can see are the flagged points around the perimeter. We had the opportunity right off the bat to meet with town staff via workshop. The town engineer was there, code enforcement was there and then essentially we went through a whole number of layout revisions and the plan before you has been looked over quite a number of times to essentially look at what alternatives we had which kind of best mitigated any of the variances. At one point the building was shown connecting to the west end of the service building. Then we put it on the east end of the service building with the connection on the east side and then it was actually pushed off the north corner where you see on the plan today.

So touching on the three variances, obviously we put together a packet which I believe all the board members should have. There's a number of supporting materials in there. Obviously the most important from a basis of review are the five factors for consideration. Looking at the project from a safety standpoint, from the overall benefit, (inaudible) the relief from the town code that we're asking. Each of the variances we went through the five factors. Obviously the three variances are very unique within themselves. One being a parking setback, one a wetland buffer, and one being a fence. So, what you'll see is a number of them really come back to one common item it's preexisting, non-conforming. As we kind of refer to it. There was a 50 foot setback approved off of 96 for Ballantyne sometime between then when Brian purchased the property, obviously some of the vehicles got pushed forward and what we're ultimately requesting for that I think is 46.7 feet. And how we accomplished that would be by putting a drive aisle in front of the display vehicles which keeps them set further back into the site. As far as the set back on Omnitech, one of the more I think important considerations is when Ballantyne was approved

Omnitech Drive didn't exist. That whole business park wasn't back there and when they did the development of the road for that project they actually chopped off a corner of the property which would be on the far west, or left side of the screen. So, you'll see that setback was not self-created. It was created by nature of the development of Omnitech and the businesses that went along with it. The fence itself we're proposing a decorative aluminum fence. I think going through the corridor there, you'll see a similar style is utilized on some other projects. Obviously, that particular style fence was selected with aesthetics in mind, view from the public right of way. We did include a cut sheet and a photo. Mr. Wilkins has used the same fence on other of his facilities particularly along the right of way, where views are important.

Jumping kind of into the wetland request, obviously, the town adopted a code section which pretty closely mirrors what the NYS DEC requires. They refer to it as 100 foot buffer. The town kind of refers to it as 100 foot set back. Going back we were researching with town staff whether there was any variances for that because the Ballantyne plan which I included I think in the packet, had a substantial amount of parking within the buffer that was approved by the planning board. But we couldn't find any records of variances to go along with it. I obviously discussed, we've engaged New York State DEC right at the onset of the project. We're working with an environmental consultant, Gene Collett who runs Environmental Resources LLC. He had the opportunity to meet with the DEC biologists and go through what we are proposing. One of the particular items that we would be looking to do is eliminate some small portions of the parking at the rear and do some storm water enhancements. That's obviously something we've reviewed in more detail with town staff and the town engineer and the planning board. Storm water doesn't play so much a role for the zoning board, but it is something the DEC would look favorably upon. The original project predated any sort of storm water requirements, so it's something that we're able to implement if the project moves forward. And ultimately to do the work and the hundred foot buffer we would need to get the permit from NYS DEC so we understand any approval as far as the variance it would be reasonable to expect the DEC permit as a condition of the approval.

So a few of the common themes I kind of touched on are first off the existing conditions. We are working on a site where we are essentially bordered by wetlands on three sides. The property is actually about 24 acres and we can only use about 9 acres of it, so we're working within a footprint that's pretty small compared to the overall project size. The site constraints and then the overall safety and benefit of what we're proposing. Landscape, storm water. Through the planning board referral process we have gotten feedback from a number of agencies that went to New York State DEC, it went to the New York State DOT who owns the road, obviously. One of the big components of the project is we'll be closing the two access points onto 96 which are closer to Omnitech and we would be replacing it with a single driveway entrance which is further to the east. The DOT is in big favor of that because it aligns with the DOT access management guidelines going from multiple curb cuts to one curb cut. Also from the owners standpoint it does a lot better job of it separates customers from the display areas, so you don't have pedestrians walking through where RVs are driving through. That kind of plays into also the request for the fence. There have been issues with theft and I believe even recently some catalytic converters were cut out of some of the units. Obviously, that kind of activity is a draw on the town police resources and that kind of thing.

So, I think that kind of concludes my formal presentation. I'm happy to go through any of the five factors or answer questions in general and I'm sure Brian will chime in as he sees fit.

Chairman Reinhardt – Okay, thanks Alex. Sarah, do you have any questions?

Ms. Mitchell – I wrote down a few as Alex was talking. Have you gotten feedback from the DEC on their thoughts of being within that 100 foot buffer?

Mr. Amering – Yes. So the big thing the DEC was interested in were measures that we could implement

that would further prevent any encroachment. So one thing we would be putting in is a fence even around the rear of the project, obviously once a fence is put in the parking is limited to the inside of the fence, so. They were also in favor of the storm water enhancements because all the water drains from the parking lots right to the wetland, so doing the rain garden gives it a pre-treatment benefit.

Ms. Mitchell – My next question was the distance that the six foot fence would be from the right of way.

Mr. Amering – It's going to be right at the edge of the pavement which we pretty much matched what was out there today. It's about 15 feet.

Ms. Mitchell – Okay. So on the Omnitech drive or place side is the parking area right on the property line currently and will remain that way?

Mr. Amering – It's about, I think 4 and half feet off the property line.

Ms. Mitchell – Okay and then my other just basic comment would be that you used terms of preexisting/nonconforming and my thoughts for that are, we're upgrading this site and this parcel, so we wouldn't have those preexisting /nonconforming fallback issues anymore and I would think that going forward our goal would be to try to fix those preexisting/nonconforming issues. I think that's what I have at this point, Mike but I had another question, but it's escaped me at this point but once I have it I'll let you know.

Chairman Reinhardt – We'll circle back. Don't worry. Fred, questions?

Mr. Salsburg – I don't have any right now.

Chairman Reinhardt – Okay. Matt?

Mr. Nearpass – I ditto everything that Sarah had said. One thing that I'd like to see is do we have a site plan for what the site would look like if you had to maintain compliance with existing, with the current codes and the existing variances on the site. What would it look like? What would you have to do? I get it, there might be things you have to move four feet here, 10 feet there, but what I'd really like to understand what all of that is instead of trying to just pull the all the previous existing/nonconforming, what does it really take to get the site back into compliance. What does it look like, what does it cost? What are those deltas? I think it's always good to show those kind of contrasts. And get your arms around, there's a lot of moving parts here. And some kind of visual that can show us, board if we had to adhere to existing codes, here is what it would look like.

Some applicants when they do that, it's just obvious, that yeah, there needs to be some leniency here or there and in others sometimes when they put it together it's really not too far off. I know there's a variance already for the 50 foot set back, I know you want 46, but what would it look like if you had to stay at 50? Those kinds of things.

Chairman Reinhardt – I agree with that. I was thinking that similar. From time to time we've had applicants come and say, I know we've had a variance before but now we want more and if that's the case, if this board keeps granting variance on top of variance, then there's something wrong, so I like the idea. I'd like to see what it is that you're asking for, with the variances, all those variances and what it would look like if you had to comply with the code. So, what I'd like to know though and maybe more specific to flush it out, you're looking for 46.7 feet, is that on 96 or is that on Omnitech side or both?

Mr. Amering – The 46.7 is on Route 96.

Chairman Reinhardt – Okay, so you are looking for more, you had a 50 foot variance and now you want a little bit more, 46.7. I know it's still a few feet, but to Matt's point, I think showing what you're asking for and it probably is going to help this board out quite a bit to understand why it is you're asking for that.

Mr. Amering – And, kind of why we arrived at that number, it seems like a random number, I know but so the vehicles I think are parked about 15 feet off the right of way today and what we would be doing is putting a drive aisle in front of the vehicles so they could double stack them. And the vehicles would be, the drive aisle would be thirty feet which then pushes you up to the 46 whatever in change, so.

Mr. Wilkins – Alex, do you mind if I jump in on that one quick? This is Brian. Basically what we've proposed is that the fence line mirrors where the current fence line is. Our vehicles are towed vehicles so we can't park them. We like to park the vehicles front facing the road, so being that they are towed you can't run them all the way up to the fence. You've got to have them set back so a tractor or whatever can pull them, you've got to have a driveway between the fence and the first row of vehicles. So that's what we did, we set the fence where it is now and the blacktop would go up to the fence, but then we've got a thirty foot driveway down through that would be between the fence and the parked vehicles.

Chairman Reinhardt – Ok, just a thought. Just throwing it out there. I'm not committing this board to anything, just to flush it out a little more. If that were the case and if this board decided to grant the variance, Brian, would you be willing to allow the board to add a condition that there will be no parking of any vehicles on that fence? That there would be that drive aisle that there would be no parking in there? If you follow what I'm describing.

Mr. Wilkins – Yes, we are comfortable with that.

Chairman Reinhardt – Ok, just a thought. Just throwing it out there. I'm not suggesting in one way shape or form that this board is going to commit to that. Those are the questions I have. Sarah, did you remember what you were going to ask?

Ms. Mitchell – No, I don't.

Chairman Reinhardt – Well you have another cycle to think about it and you can ask it next time around.

Mr. Salsburg – I have a point I'd like to make.

Chairman Reinhardt – Go right ahead, Fred.

Mr. Salsburg – On the site plan drawing that was just up, lower left corner is a chart that compares some of the existing and some of the proposed and some of the code requirements and I think there's quite a bit of information there. I wish we could review that. Most of them are pretty favorable. I guess I was also wondering how the proposed layout, the periphery of it around the wetlands compares to what's there now and that chart has something to do with that. I think it's smaller. I think the new total footprint is less than it is now. Is that true Alex?

Mr. Amering – We actually provided an exhibit and I think we scrolled over it earlier that kind of shows where some of the parking areas and the buffer were going to be turned into green space. You'll see, there it is (referring to PowerPoint). So what we did is we overlaid the proposed limits of parking on to the existing features so, as I mentioned one of the first things we did is went out and surveyed everything to figure out where the parking was and make sure none of the parking was going to be going any further into the wetland or into the wetland buffer, I should say. So those red areas are actually areas that will be used for the storm water management which I talked about. And I think I added some square footages on there.

Mr. Salsburg – I don't recall seeing anything like that.

Mr. Amering – In your packet?

Mr. Salsburg – Yeah.

Ms. Reese – It's in the packet, but I think Fred means there's no square footages on there.

Mr. Salsburg – Yeah, that's all.

Mr. Amering – Okay. I see I called it out, but didn't put the square footages.

Mr. Salsburg – That's okay. It's not going to determine anything. It's just (inaudible) my point.

Mr. Amering – So, kind of for comparison like you brought up, one of the items we look at is lot coverage and the code in the commercial/light industrial requires less than 35%. Existing is 30.2 and proposed is 31.1 so we are going up slightly but what it's due to is the area where the new entrance will be in the top right corner. We're actually taking out a number of the parking areas within the buffer though. So you can see the buffer is kind of the dashed line through there.

Mr. Salsburg – I think the choice of the fence is very nice.

Chairman Reinhardt – Any other questions, Fred?

Mr. Salsburg – No.

Chairman Reinhardt – Matt, any other questions?

Mr. Nearpass – No, I'm all set. For now. I know I'll have more when I kind of see the bigger picture here, but I mean in general its doing what they can, but it would be good to see the (inaudible).

Mr. Wilkins – Can I ask a quick question so that we can prepare that the right way?

Chairman Reinhardt – Sure.

Mr. Nearpass – (inaudible)

Mr. Wilkins – So, my question is the current 50 foot set back is that where the fence should be or is that an open display set back?

Chairman Reinhardt – Al, you want to comment on that?

Mr. Benedict – I believe that was supposed to be the closest point at which any product was to be displayed.

Mr. Wilkins – So at that point, this proposal is 3 feet, 2 feet six inches from being compliant.

Mr. Benedict – Compliant, yes.

Chairman Reinhardt – So, Al, if I understand what you're describing then if the vehicles were parked a little more than two feet where they are proposed further south they would be in compliance with the

code? And, it doesn't matter if there's a driveway there or not?

Mr. Benedict – It'd be in compliance with the variance that was granted previously.

Chairman Reinhardt – So they could have a drive aisle parallel to 96 and still be in compliance?

Mr. Benedict – I'd have to go back and reread the code. I think the code refers to 80 feet to parking spaces, I don't recall whether it talks about drive aisles or not, but I believe it also applies to open displays so I'd have to check the code before the next meeting if it pertains to a drive aisle or not.

Chairman Reinhardt – Alright, I think that would get us on the same page. It sounds like they want the drive aisle and it sounds like their calculating that into.

Mr. Wilkins – We'll do a drawing.

Chairman Reinhardt – If I understand the application right, you want the drive aisle in front of the first line of where the trailers are being parked and it sounds like the drive aisle may not count against the distance to the right of way. So if Al's going to get clarification on that that could make a difference in our determination.

Mr. Wilkins – Okay. So then to prepare, you would like to see us do an example, do a site drawing with the fence at 50 feet, that way depending on what Al comes back with you've got the ability to look at it both ways.

Chairman Reinhardt – Well Al, we're back to the question does (inaudible) right of way. So wherever the fence is does that need to be 50 feet from the right of way?

Mr. Benedict – I guess my opinion would be it talks about display area, if the trailers are displayed 50 feet from the right of way then it would meet the code. Like I said, I would have to check on the drive aisle, but I would think the display would start where the trailers are displayed, not the open space between the fence and the trailers.

Mr. Nearpass – But what about the fence how far back or how close to the?

Mr. Benedict – That would depend on the variance you want to give them for that.

Mr. Nearpass – Without a variance where would it have to be?

Mr. Amering – It's anywhere forward of the building, correct Al? The front yard?

Mr. Benedict – That's correct.

Mr. Amering – Sorry I think there's a little delay. I'm not trying to cut anyone off.

Mr. Benedict – Yes that would be correct. The fence is supposed to be behind the front line of the principal building. The fence that exists now was previous to the existing fence code.

Mr. Amering – So kind of by nature of trying to keep the buildings towards the back of the site, we did kind of create you know, the need for that variance, but again code also only says two feet and can two feet, a two foot high fence realistically provide any benefit?

Chairman Reinhardt – Then I think the question we have before us is the 50 foot current variance for the

display area, what would that look like and then as your proposed 46.7 feet from the right of way for the display area? I think it's going to help us even further fine tune this is whether or not that drive aisle counts as a display area. I think we're on the same page here, that drive aisle is never going to be used as a display area. It's always going to be a drive aisle.

Mr. Wilkins – Correct.

Mr. Amering – I think that's something between code enforcement and fire enforcement, they would want to see that and that's what I think Brian said he was agreeable to the condition of approval. I believe when they approved the 50 foot variance, I think there was some sort of consideration that they want smaller units and I think the smaller units would typically be the tow behinds, right Brian? Which you can't hop in and turn a key and drive off. It needs the drive aisle.

Chairman Reinhardt – So, Brian I would imagine even as the owner in the best interest no customer parking. Nobody parks there because you can't get anything in and out of there with somebody parking in there.

Mr. Wilkins – So that's one of the thing that's neat about this layout is when you come in all of the inventory, will be behind, hopefully, as long as you grant the variance, all of the inventory is behind a fence, so the customers can't get into that display area without coming through the building. That's a safety thing for us and obviously a traffic control thing. One thing we don't want is when we're moving vehicles around that yard, we don't want a kid running around. So we really try to make sure that customers aren't out in that lot unless they are accompanied with employee. And that's one of the reasons why the fence is so important and also from a security standpoint as Alex said, we just, two three weeks ago, we had a catalytic converter stolen out of Class C motorhome. We've had TVs taken out of RVs for years. It's just the nature of the RV business that if you don't put the product behind a fence you're just inviting thievery. We think the fence is really important. We love the idea of a sharp, good looking fence. Fred, I appreciate the compliment about the fence. We think that adds a lot to the look of the facility.

Mr. Salsburg – I think the question of the open space between the fence and the vehicles is settled. It will be open. And, if you can measure to the vehicles, the fence can be closer to the road to than that with no problem. Yes?

Mr. Wilkins – Was that a question for me, Fred?

Mr. Salsburg – No, I'm just trying to see if we have agreement on where we're measuring to. It would be open.

Mr. Nearpass – I'm just trying to think of a similar. I'm just trying to figure out how close the fence is going to be to the road. We had another similar application for a car dealership that wanted also to put a fence around their lot. I believe it was Auto Auction and it ended up being in the right of way and just close to the road and I don't believe the fence carried. I'm just trying to understand if that's the situation where I hear how close is that fence going to be to 96?

Mr. Wilkins – On the 96 side, it looks like Al, correct me if I'm wrong, that fence is running as close as 13.6 and it fans out to 42.1.

Mr. Amering – That's correct. I mean the fence is essentially going to be where vehicles are parked today. And the vehicles are going to be pushed back 30 feet.

Mr. Nearpass – But the vehicles are not supposed to be parked there today, right. They are not supposed



to be 13 feet from the road.

Mr. Wilkins – Yeah and I don't know Alex if the vehicles always are. I don't think for the first couple years we owned it, I don't think we understood what the variance was, but I think the majority of the time those vehicles are parked for the same reason. They are parked back further. Basically we're just trying to mirror what we're doing now is just trying to mirror the current fence line and an open display setback from the fence line.

Mr. Amering – Yes, correct me if I'm wrong Brian, but I think the first time you say the Ballantyne approved drawing was probably when we went in and met with staff and town staff gave us a copy. We went into this not knowing what was approved or not approved.

Mr. Wilkins – I think when I purchased the business I do recall Mark McMahon saying something to me about a 50 foot setback. I don't know that I completely understood what it was so obviously that's on me. But either way, like Sarah said the whole idea of this is to develop an agreement of what's compliant and stick to it going forward.

Chairman Reinhardt – I think we're on the same page here. We'll have another chance the next cycle once we see the county planning board's comments. We'll all have an opportunity to certainly Alex, make a further presentation and comment on the county planning board's comments and then the board will then have a further opportunity to discuss and comment. Alright? Sound like a plan?

Mr. Amering – Yes, appreciate your time.

Mr. Wilkins – Yes. Thank you.

Chairman Reinhardt – Thanks for your patience. Certainly don't want to cut anybody off, but again this will be an opportunity. We'll have more time to thoroughly vet this and discuss it and talk about it. So if that's okay with everybody, then I think we're good. Our next meeting is going to be the 21<sup>st</sup> of June.

Alex, Brian, you're all set? Anything else you want to let us know before the next one?

Mr. Wilkins – We're good, thank you.

Chairman Reinhardt – Thanks so much. See you the next time. Any board members want to touch base on anything discuss, comments, concerns?

Mr. Salsburg – Do you think it would be a good idea for Kim to send us a copy of the larger size drawings, the existing and the proposed plans?

Chairman Reinhardt – Well, what about this? If Kim makes them available and then we can go and pick them up instead of sticking a whole bunch of postage on it. Would that work for you, Fred? If she made them available and we could just come over and get it? Is that alright Kim?

Ms. Reese – Yep. So you just want we have now or what they are going to provide as well? Are you going to provide something else, Brian before the next meeting?

Mr. Wilkins – We'll work on a drawing, the fence line at 50 feet.

Ms. Reese – Okay. I'll let you know when they are ready.

Chairman Reinhardt – Good. That's works for me.

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Mr. Nearpass – I'm good with them electronically, you don't have to print them for me.

Chairman Reinhardt – Alright, anything else? Drew, anything you want to chime in on before we have a motion to adjourn?

Mr. Cusimano – No, I appreciate it guys. Next meeting I'll be with you guys and then after that starting in July you'll have Councilman Kahovec as your representative. I appreciate all the hard work the first half of the year. I'll see you guys next meeting.

Chairman Reinhardt – Very welcome. Alright then, I would entertain a motion to adjourn.

Mr. Salsburg – I'll make the motion.

Chairman Reinhardt – Thanks, Fred. All in favor. (Aye) Have a good night everyone, see you in a couple weeks.