

A regular meeting of the Town of Victor Zoning Board of Appeals was held on Monday, May 4, 2020 at 7:00 PM via video conferencing to consider the area variance applications of WD Partners (Dick's Sporting Goods) and Max Vasta (MTM Automotive). There was no public gathering based on the recommended precautions for limiting exposure to COVID-19. The public had the opportunity to attend, listen and observe this meeting live on YouTube. The link was posted.

PRESENT: Michael Reinhardt, Chairman; Mathew Nearpass, Vice-Chairman; Donna Morley; Fred Salsburg, Sarah Mitchell

OTHERS: Brian Lorenz, WD Partners; Max Vasta, MTM Automotive; Wendy Meagher, Meagher Engineering; Tony Tintera, Meagher Engineering; Don Cheney; Al Benedict, Town of Victor Code Enforcement Officer; Marty Avila, Town of Victor Code Enforcement Officer, Kim Reese, Secretary

Chairman Reinhardt opened the meeting, the Flag was saluted, and the Pledge of Allegiance was recited.

APPROVAL OF MINUTES:

On a motion by Fred Salsburg, seconded by Donna Morley; RESOLVED that the minutes April 20, 2020, be approved as submitted:

Chairman Reinhardt	Aye
Mr. Nearpass	Aye
Fred Salsburg	Aye
Donna Morley	Aye
Sarah Mitchell	Aye

Approved: 5 Ayes, 0 Nays

PUBLIC HEARING:

Mr. Reinhardt asked Marty Avila if any comments or feedback was received from the previous public hearings for either application. Mr. Avila indicated that nothing had been received as of end of business on May 4<sup>th</sup>.

DICK'S SPORTING GOODS  
200 Eastview Mall Drive

2-Z-2020

Applicant is requesting area variances to install a 16' 9" tall scoreboard sign whereas, §165-5B(1) states freestanding signs are limited to 10 feet in height and may only contain the name of the plaza or business. §165-5N states signs are not allowed to advertise for products. The property is zoned commercial and in the Route 96/251 Corridor Overlay district and owned Seritage SRC Finance LLC.

Mr. Brian Lorenz was available for the application.

Chairman Reinhardt – What we are going to do here is we have to plug in the criteria and we'll walk through that one by one. If there is anything that you would like to add or comment on before we do that, we'd welcome your thoughts on that.

Mr. Lorenz – No, I really don't have anything to add other than what I provided last month and I think we are all on the same page and if you have any other questions for me, I'm happy to answer them.

Mr. Reinhardt – Great. Matt, do you have any comments, concerns, questions for Brian?

Mr. Nearpass – No, I'm all set.

Mr. Reinhardt – Okay. Donna, any questions, concerns, thoughts for Brian?

Mrs. Morley – No, thank you.

Mr. Reinhardt – Fred, questions, concerns, comments?

Mr. Salsburg – No, I think I'm good.

Mr. Reinhardt – Sarah. Questions, concerns, comments?

Ms. Mitchell – No, I'm all set.

Mr. Reinhardt – Great, okay. So, I have some notes. I'd like to walk through them.

On motion of Donna Morley, seconded by Fred Salsburg, the public hearing was closed.

Adopted Ayes 5, Nays 0.

DECISION:

On motion of Matt Nearpass, seconded by Donna Morley:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on March 13, 2020 from WD Partners for Dick's Sporting Goods, 200 Eastview Mall Drive; requesting an area variance to allow a 16' 9" tall proposed sign, whereas Town of Victor Code §165-5B(1) states one freestanding monument building identification sign may be installed which identifies the name of the building or plaza, but

does not identify any specific business and, freestanding signs are not to exceed 10 feet in height;

WHEREAS, said application was referred by Al Benedict, Code Enforcement Officer of the Town of 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 April 12, 2020 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, the Ontario County Planning Board assigned the referral, 53-2020, as a Class 2, AR on April 8, 2020 and returned it to the local board with a final recommendation to deny the application; 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 April 20 and May 4, 2020 at which time no one spoke for or against the application; and,

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: The proposed scoreboard is not intended for advertising. There will be no name change in the scoreboard. The 9" lettering will read "Dick's Sporting Goods" and it is unlikely that the words on the sign will be observed from the roadway. It is unique in that it is a fenced in athletic field. There is a connection to the community. It is within the perimeter of the store and not intended to market the business. The fenced in athletic area is a new concept for Dick's Sporting Goods store.

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: The 10' requirement would create a risk to the customers that are within the area because the bottom of the sign would be about 3 ½' from the ground. Having it at 16' 9" would offer some protection from soccer balls or footballs which could cause damage. The electric conduits are on that side of the building and since the field is linear, it should be located on the end of the field, and would make sense that the position and location of the scoreboard is in the best possible location.

3. The requested area variance is not substantial.

Justification: The 9” lettering will read “Dick’s Sporting Goods” and it is unlikely that the words on the sign will be observed from the roadway. Having it at 16’ 9” would offer some protection from soccer balls or footballs which could cause damage.

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. The alleged difficulty is self-created. This consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

NOW, THEREFORE BE IT RESOLVED that the application of WD Partners for Dick’s Sporting Goods, 200 Eastview Mall Drive, requesting an area variance to allow a 16’ 9” tall proposed sign, whereas Town of Victor Code §165-5B(1) states freestanding signs are not to exceed 10 feet in height, BE APPROVED;

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

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. That the letters shall be limited to 9”.
3. That there shall not be any changeable copy on the sign.

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    Ayes 5, Nays 0.

VASTA, MAX  
681 Phillips Road

03-Z-2020

Applicant is requesting area variances for a proposed building 26.7' from an existing residential structure. Schedule II, Area and Height Requirements indicates 40' is required. The applicant is also requesting a drive aisle width reduction to 22.5' whereas Section 211-32A(2)(a)[1] states each off-street parking space for residential and non-residential use shall measure a minimum of 9' by 18' with 26' aisles. Gravel milling for parking requested whereas Section 211-24(9)(d) states access roads shall be paved and hours of operation beyond 7:00 p.m. whereas Section 211-24(9)€ states hours be limited to 7:00 p.m. on weekdays and 6:00 p.m. on Saturday. The property is zoned Light Industrial and in the Route 96/251 Corridor Overlay District and is owned by Della Buscemi.

Mr. Anthony Tintera, Meagher Engineering, appeared via Zoom. Also present was Wendy Meagher, Meagher Engineer and Max Vasta.

Mr. Reinhardt – We are going to do pretty much the same pattern if you were listening the Dick's application. What we do have, or at least I was notified of, was there was a letter from MCA Group to the Planning Board dated April 30<sup>th</sup>. Are you aware of that?

Mr. Tintera – I don't think so, no.

Mr. Reinhardt – Okay, do you know who they are, this business called MCA Group? Ever heard of them?

Wendy Meagher – No.

Mr. Reinhardt – In short, the letter dated April 30<sup>th</sup> to the Planning Board raised some concerns about the upkeep of the property and it being unsightly and the concern since it is an auto repair, what is it going to look like and just, at least to give you an opportunity to be heard on that, what efforts will be made, at least, to keep that property as business looking and as kept up as possible?

Mr. Tintera – I shared an updated version of the site plan with the Board and if you can bring it up, I can elaborate on some of the changes we have made between the original site plan that was shown a couple of weeks ago and the one now.

If you could show C2 – ultimately the major change that we made with regard to the entry to the site is that ultimately it would narrow the driveway entry as it is show here. Ultimately, per your feedback from the previous meeting, what we are also proposing now is to pave the first 30’ from the edge of pavement of Phillips Road, with recycled asphalt in order to help maintain that upkeep of the commercial aspect of the property in terms of the ingress and egress to the site. Some additional detail with regard to what is shown, we show additional parking along the north side of the parking and ultimately that’s because the residential use for the site was not accommodated for originally. Those two spaces are shown in line with 5 of the 6 that would be used for the commercial use.

Ultimately the proposed storage located behind the structure – originally we had not shown what condition there would be – whether it was paved or would remain grassy. Ultimately it is shown now as being like the surrounding proposed driveway (inaudible) and, likewise, it is shown up to 10’ from the property line in accordance with the code.

In terms of grading to the south of the proposed structure, ultimately what we have introduced into our updated site plan is essentially a depression or a pond in order to keep the worst case stromwater runoff from the site for the 100 year storm per the requirements of the Town and ultimately we have been able to keep it limited to the site so that no poor drainage conditions would go off site to either to the north or to the south west.

In terms of the accessible parking, as well, we have also pushed that further north in order to eliminate some of the additional pavement which is shown extended further to the south.

Mr. Reinhardt – Anything else you want to add before I circle around for some quick questions from the Board?

Mrs. Meagher – I think just having the entrance narrowed down and pushing parking away from Phillips Road will help things and make it a little nicer closer to the road. Maybe that’s their concern because right now that is a wider driveway so there is some parking a little closer to Phillips.

Mr. Reinhardt – Anything else you want to add? Okay. Matt, any thoughts, concerns, questions you have before we press through the criteria?

Mr. Nearpass – Other than just to address the letter. MCA is the owner of Omnitech Park. I'm assuming we are going to provide them with a copy of the letter. For the most part, what I got from that is they just want to make sure that you are going to be a good neighbor. They notice exactly what you had just said which is more vehicles parking there. They have seen, in essence, the change of hands to a new ownership of the property. They feel like it's deteriorated and they are not sure if that's a sign of what's to come. So, I don't know, if, Max, you want to talk a little bit to that and address their concerns. They had other questions on there that I think was more related to how, in general, does the Town regulate a small auto repair facility but I think one of their main concerns that came across to me was how good of a neighbor are they going to be. We've seen this property deteriorate since it's changed ownership.

Mr. Vasta – Right now it is kind of a little bit under construction because we are remodeling the inside of the house so there is a little bit of too much going on right at the beginning of Phillips Road. So, all of our parking right now is literally on top of each other right by the road so it does look a little bit cluttered but once we are able to start this project and move everything away from the road, it shouldn't look (inaudible)...a little neater there.

We are also going to be adding more pine trees around the whole surrounding property where there is a few initially. We are going to start replacing some of those so there's a new tree line all the way around to keep it a little more neat looking. There is a lot of debris on one of the sides that we are trying to clean up that was all poison ivy and all that so right now it looks a little messy but we are actually in the middle of cleaning up.

At this point it might look a little messy but we are trying to get it all cleaned up.

Mr. Nearpass – Okay and Tony I know you talked about the driveway and you are paving that little bit but are you still holding to paving the entire site within 3 years?

Mr. Vasta – Yes sir.

Mr. Nearpass – No further questions from me.

Mr. Reinhardt – All right, so I'm glad, Matt, you brought that up. My thought is on that three year limit is to put that as a condition should the variance be granted so please comment on that as we go along. Sarah, any questions, concerns, comments?

Ms. Mitchell – No, I feel like Max addressed the issues in the letter and it sounds like they do have a good game plan to fix the concerns that the neighbors have and I think that they are alleviating a lot of the issues there. So, I think, from the sound of it, it's going to look better then it does currently.

Mr. Reinhardt – Donna, thoughts, questions concerns?

Mrs. Morley – I’m good. Matt asked the question I was going to ask so I’m good.

Mr. Reinhardt – Fred, questions, concerns, comments?

Mr. Salsburg – The guy has a little beef in his complaints. I don’t think he has a standing here to complain about some of the stuff. The stormwater management and more landscaping on the south side should take care of that neighbor problem. So, I think that’s great. I’m all set. They covered this pretty good last time.

Mr. Reinhardt – Al, I’d just like to touch on the concerns from MCA Group. Correct me if I’m wrong, that’s probably for the eyes of the Code Enforcement Officer that should it turn unsightly and problematic with code violations, the Code Enforcement Officer could and should go out there and address that. It really shouldn’t be tangled up with these variances here.

Mr. Benedict – That’s correct.

Mr. Reinhardt – Good.

Mr. Reinhardt reviewed the criteria in the draft resolution.

There was discussion regarding the hours of operation. Mr. Nearpass stated that his understanding was that the hours of operation would be from 7:00 a.m. to 5:00 p.m.. He asked if the tow truck drivers out in the field would not be bringing cars or vehicles to the site outside of those hours or that they just would not be working on those cars that they bring to the site but they could bring a car to the site any time of day or night. Mr. Vasta stated that the actual hours of operation would be 8:00 a.m. to 6:00 p.m. and then a half of a day on Saturday (8:00 a.m. to 1:00 p.m.). As far as the 24/7 operation, Mr. Vasta indicated that it would an emergency 9-1-1 call that one of his drivers or himself would get called out and has to bring the car back to storage. Besides that Mr. Vasta stated that there wouldn’t be any actual working on vehicles unless it was during operating business hours (8:00 a.m. to 6:00 p.m.).

Mr. Reinhardt asked the applicant if he was comfortable with a condition that the only work that will be done outside of hours is to bring a vehicle into the business area and not work on it, just transporting the vehicle to the location and storing it. Any work on a vehicle would be in violation of the variance. Mr. Vasta agreed and stated that after the hours of operation, it would be to literally just drop off a vehicle and then his driver or himself would go back home.



Mr. Reinhardt asked how long it takes, in a normal situation, to drop a vehicle off once you enter the premises and leave. Mr. Vasta stated that it depends on who is doing it. If it was him, it would take approximately 10 to 15 minutes. Some of his drivers it would be within a ½ hour. Mr. Reinhardt was trying to put something on the record that if the Board decided to grant the variance for the hours of operation, that should there be complaints, there is something to refer back to for the Code Enforcement Officer to determine if it is in violation of the variance. Mr. Vasta indicated that he has operated in the Town of Victor in the past and he hasn't had any sort of complaints on that issue. Mr. Benedict indicated that the Town has not had any complaints about after hours operations.

On motion of Matt Nearpass, seconded by Fred Salsburg, RESOLVED, that the public hearing was closed.

DECISION:

On motion of Fred Salsburg, seconded by Donna Morley:

WHEREAS , an application was received by the Secretary of the Zoning Board of Appeals on April 6, 2020 from Max Vasta, 681 Phillips Road, requesting the following variances:

1. To construct a 6000 square feet structure 26.7' from an existing residential structure whereas Schedule II, Area and Height Requirements , indicates that structures in the Light Industrial District are required to be separated by 40 feet;
2. For a drive aisle width reduction from 26' to 22.5' whereas §211- 32A(2)(a)[1] states each off-street parking space for residential and nonresidential use shall measure a minimum of 9' by 18' with 26' aisles;
3. To install gravel milling for parking whereas §211-24(9)(d) states access roads shall be paved;
4. That the hours of operation be beyond 7:00 pm whereas §211- 24(9)(e) states that hours of operation be limited to 7:00 pm on weekdays and 6:00 pm on Saturday.

WHEREAS, said application was referred by Al Benedict, Town of Victor Code Enforcement Officer 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 April 12, 2020, and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, a Public Hearing was held on April 20 and May 4, 2020 at which time no one spoke for or against the application. A letter dated April 30, 2020 was received by MCA Group regarding the referenced property with concerns of disposal of wastes such as degreasing solvents, oil, gasoline, concern about the gravel parking and driveway relative to storm water management and storage of vehicles; and,

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: The proposed pole barn will be used for an auto repair business and the existing residential building will be used for the business end of the repair business, as well as a residence. The fenced in area to the east is for impounded vehicles. The maneuverability of the tow trucks dictates the location of the proposed pole barn as well as the location of the overhead door.

The need for ample space corresponding to the current dimensions of the proposed structure coincides with the function of the structure itself, which, in turn, limits location of parking. Placement of the new pole barn allows for easier entrance through the overhead door.

A sprinkler system will be installed.

The parallel parking spaces to the north limits the options of where the pole barn could be located.

The vehicle turnaround is not intended for frequent customer use.

The applicant has presented that the only time he would be outside of the normal hours of operation of 8:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 1:00 p.m. on Saturday would be to drop off a vehicle in the business area and then leave and no work would be conducted on the vehicle.

**This justification applies to variances 1, 2, 3 and 4 above.**

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: The proposed pole barn will be used for an auto repair business and the existing residential building will be used for the business end of the repair business, as well as a residence. The fenced in area to the east is for impounded vehicles. The maneuverability of the tow trucks dictates the location of the proposed pole barn as well as the location of the overhead door.

The need for ample space corresponding to the current dimensions of the proposed structure coincides with the function of the structure itself, which, in turn, limits location of parking. Placement of the new pole barn allows for easier entrance through the overhead door.

A sprinkler system will be installed.

The parallel parking spaces to the north limits the options of where the pole barn could be located.

The vehicle turnaround is not intended for frequent customer use.

The size of the lot limits the alternatives.

If the pole barn location were to change, additional variances may be required. It appears in the optimal location.

The drive aisle is not intended for two-way traffic and would be unlikely.

**This justification applies to variances 1, 2, 4 and 4 above.**

3. The requested area variance is not substantial.

Justification: Attention has been given to increased fire resistance between both the pre-existing, non-conforming house and the proposed pole barn structure.

The drive aisle width is independent of parking type, and the proposed type of parking would require less room for maneuverability.

The existing parking region uses the type of parking surface requested. The function of the business would see less employees/customers routinely enter and exit the site.

The effects of the variance would see limited access to the site, and no extended use of the proposed structure.

The proposed pole barn appears in the optimal location.

**This justification applies to variances 1, 2, 3 and 4 above.**

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

Justification: The site layout accounts for the proposed building separation with attention given to screening, as well as drainage being directed away from the driveway entrance for the neighboring property to the south.

**This justification applies to variances 1, 2, 3 and 4 above.**

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

NOW, THEREFORE BE IT RESOLVED that the application from Max Vasta, 681 Phillips Road, requesting to construct a 6000 square foot structure 26.7' from an existing residential structure whereas Schedule II, Area and Height Requirements, indicates that structures in the Light Industrial District are required to be separated by 40 feet; a drive aisle width reduction from 26' to 22.5' whereas §211-32A(2)(a)[1 ] states each off-street parking space for residential and nonresidential use shall measure a minimum of 9' by 18' with 26' aisles; to install gravel milling for parking whereas §211-24(9)(d) states access roads shall be paved and requesting hours of operation beyond 7pm whereas §211-24(9)(e) states hours be limited to 7pm on weekdays and 6pm on Saturday as shown on drawing entitled Vasta Site Plan, Drawing Nos. C-1 through C-7, dated March 10, 2020, LAST REVISED April 22, 2020, BE APPROVED; and, be it

FURTHER RESOLVED that the following conditions are imposed:

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. That the parking areas and drive aisles shall be paved within three years from the date of this variance.

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, Ayes 5, Nays 0.

OTHER BUSINESS

SARKIS, CHADI

6739 State Route 96

Mr. Salsburg asked about an update on the extension of the permit for Mr. Sarkis.

Mr. Benedict indicated that the Town sent Mr. Sarkis a checklist for a Certificate of Occupancy.

Mr. Benedict recently spoke to him and he indicated that he couldn't get his countertop guy in because they wouldn't come out because of the NY PAUSE situation. Mr. Benedict told him to let the Town know when they do the work and get it completed. Mr. Benedict did indicate Mr. Sarkis that there were two other items that he needed to finish up.

Mr. Benedict stated that Code Enforcement will give him until the NY PAUSE is relaxed a little bit and then follow up with him again and see if he has everything done.

Mr. Reinhardt stated that once the Governor opens the State again, and relaxes the "stay", because right now there can't be any unnecessary action taken and to enforce the code, it is going to be difficult. Mr. Reinhardt indicated that he thinks what is going to happen is a calculation will need to be made from the time that the Governor shut the State down until the time he re-opens it, and add those days on to when he was supposed to get the work done. He indicated that it might be a bit of a mathematical exercise but once the Governor opens the state again, do the math and then let Mr. Sarkis know he has "x" amount of days to get his Certificate of Occupancy.

The Board members were in agreement with that approach.

ALLORA SPA

Mr. Nearpass asked if Allora Spa had a variance to have it's own monument sign. Mr. Benedict indicated that it was done years ago, prior to the current ZBA. Mr. Nearpass thought Allora had not been there for that long. Mr. Benedict stated that there had been another spa there prior to Allora but the variance for a second monument sign was granted. Mr. Nearpass was okay with that.

Motion to adjourn Donna Morley, seconded by Matt Nearpass. It was unanimously agreed and RESOLVED that the meeting was adjourned at 7:47 PM.