

**Subject:** Variance (Fifth District)  
**Author:** Chelsie Fernald, Planner  
**Department:** Development Services  
**Meeting Date:** June 6, 2023  
**Item Description:** **Jay Maupin** as Agent for **Oleg Mitnik** requests a **variance** from Section 3.4 Buffers. Located on Highway 21 South, zoned I-1. [Map# 465 Parcel# 1A]

### Summary Recommendation

Staff has reviewed the application, and recommends **Approval** of the request for a **variance** from Section 3.4 to reduce or eliminate required buffers between I-1 and B-3 zoned parcels.

### Executive Summary/Background

- Pursuant to Appendix C-Zoning Ordinance, Article VII-Planning Board, Section 7.1.8, variances may only be granted if the following findings are made:
  - That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness, of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not to circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located; and*
  - That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.*
- A wrecked car export facility is a heavy industrial use. The parcel is bordered by I-1 and B-3 zoned properties. The required vegetative buffer between I-1 zoned parcels is 25'; the required buffer between I-1 (Heavy Industrial) and B-3 zoned parcels is 150'.
- North: The applicant requests a variance to eliminate the required 25' buffer between I-1 zoned parcels.
- South: No Variance. The plan shows the required 150' vegetative buffer between the I-1 zoned subject parcel (465-1A) and the B-3 zoned parcel to the south (fronting on Hwy 21).
- East: No Variance. The applicant owns the I-1 parcel to the east; the parcels will be recombined.
- West: The applicant requests a variance from the required 150' buffer to 25' between the subject parcel (465-1A) and the B-3 zoned parcels to the west. The hardship is related to the jurisdictional wetlands on the site. Denial of the variance will reduce the usable high ground area on the site by 41%. The lot will be used to store vehicles prior to shipment. The applicant proposes that the 12' planted Berm/ fence will provide sufficient visual screening.
- In the reduced buffer area, the applicant proposes a 6' planted berm with 6' privacy fence upland areas along the boundary with B-3 properties to the west. The wetland areas will not be disturbed.
- A variance request to reduce the buffer on the western boundary was denied on 2/7/2023.
- Mr. Ryan Thompson suggested clarity that the West buffer is actually closer to 40' because of the added berms.
- Mr. Dave Burns was concerned about the North West portion of the North buffer because it is showing as usable land and the buffer would be nonexistent.
- At the May 9, 2023 Planning Board Meeting, Peter Higgins made a motion for approval with Staff recommendation. The motion was seconded by Brad Smith and carried unanimously.

### Alternatives

1. **Approve** the request for a **variance** from Section 3.4 to reduce or eliminate required buffers between I-1 and B-3 zoned parcels.
  1. All fencing shall be in place, and vegetative buffers planted, before car export operations expand into Dickey Tract.
2. **Deny** the request for a **variance** from Section 3.4 to reduce or eliminate required buffers between I-1 and B-3 zoned parcels.

**Recommended Alternative: 1**

**Other Alternatives: 2**

**Department Review:** Development Services

**FUNDING:** N/A

**Attachments:** 1. Variance application

3. Site Plan

5. Deed

6. Ownership certificate/authorization 4. Aerial photograph