

# TOWN OF EAST BLOOMFIELD

October 26, 2022

**Zoning Board of Appeals Members Present**, Sonja Torpey, Art Babcock, Mark Thorn, Rosemary Garlapow  
**Absent:** Tim Crocker

**Others Present:** Kimberly Rayburn (Building & Zoning), Christel Daggett (Secretary), Al LaRue (McMahon LaRue Associates) Ryan Duvall (applicant)

Torpey opened the meeting at 7:07 pm. The Board opened the public hearing and waived the reading of the public notice.

**I. Area Variance, TV2-21 Eric Geoca, Agent for Kimberly & Robert Dauphinais (Owner,) Greg McMahon (McMahon LaRue Associates P.C., Agent) m Wilson Area Variance #TV8-2022** rear lot line setback.

Kimberly & Robert Dauphinais had applied for an Area Variance in June, 2021 for 5.06+/- variance to the side setback. 44.94 feet where 50 is required which, was granted. LaRue made a mistake when they laid out the stakes for the surveyors and didn't realize it until after the house was built. A as built survey is not required by the Town but when he found the error, he had to let the Town know. LaRue is now requesting a side setback variance to 42.5ft where 44.95 feet was previously approved.

Babcock declared SEQR a type II, with no further action required Torpey seconded. All voted aye

Babcock motioned Torpey seconded to close the public hearing, all Board members present voted aye.

The Board then started their review of the State mandated five (5) criteria tests.

1. **Undesirable change to the neighborhood:** 2 ft away from previous variance, single family home with same profile
2. **Alternative method:** As-built retroactive variance request, besides tearing house down there is no other method
3. **Substantiality:** 44.95 ft. versus 42.5 where 50 is required request is less than 10 % not considered substantial
4. **Impact on the environment:** Home is already built. No more than previously approved variance
5. **Self-creation:** yes

**Torpey motioned Babcock seconded to grant the area variance for Kimberly & Robert Dauphinas (Owner,) McMahon LaRue Associates P.C., (Agent)**

**Whereas:**

1. The Board reviewed the state mandated criteria below:

**Undesirable change to the neighborhood:** no issues, no comments from the neighbors

**Alternative method:** no other alternative

**Substantiality:** less than 10% requested

**Impact on the environment:** No impact on the environment.

**Self-creation:** The Board feels this is self-created

**Record of Vote:**

Babcock **Aye** Thorn **Aye** Torpey **Aye** Garlapow **Aye**

**All Board members present voted Aye, Vote was carried unanimously.**

The Board opened the public hearing and waived the reading of the public notice.

**II. Area Variance, #TV9-22 Owner Kimberly Duvall 6555 St Rt.5&20 #81.00-1-60.120 AG Mercantile barn review of front set back.**

Rayburn informed the Board that the neighbor notifications were not sent out. Rayburn discussed with Kim Duvall before meeting, she stated she never received the letters, Rayburn stated she thought they were attached to the ground sign Duvall was given at the Planning board meeting. The notice was in the paper and on the Towns website. All but 1 neighbor is a commercial business, the other being Hudson who sold them the property.

Babcock stated the Planning Board did not approve the site plan; Rayburn stated they were not required to do so. A discussion was held on the required setback. Rayburn stated that regarding setbacks the code states 1 **Where a CC Community Commercial use fronts on a state highway**, the minimum front setback of the building shall be 100 feet from the highway right-of-way. In no event shall parking be permitted within 30 feet of the highway right-of-way. This frontal area shall be landscaped and maintained as a grassed area.

However, it is her interpretation that this use is not a commercial use but is an ag/mercantile. Therefore, she is stating that the setback is only required to be 75 ft back from the right of way.

Babcock stated that the NYS Ag & Markets law 305 A wants municipalities to consider giving exception for ag businesses. Torpey asked what impact that would have on this variance request. Babcock stated that farm business and agriculture may not have to go through the same standards. He also stated the Town does not have code in place regarding the 305 A guidelines. The Board discussed the future use of the building and commented that if it were ever sold could it be used for a commercial use, or would this variance be only for the Ag use? Torpey asked if future use was something they needed to look at this meeting? Babcock and thorn both stated that now that the building is up and they are asking for a variance as a Board they need to look at past, present and future uses.

Ryan Duvall informed the Board they are requesting to buy back the right of way frontage from the State as Hudson (their neighbor) has done. He also stated that they would not accept any conditions or restrictions to be put on the property and they have discussed this with their attorney. Their attorney told them they did not even have to go through the variance process, but they are doing so to keep everyone happy and move forward. Their surveyor set the stakes and the location was approved by Woodruff. It fits in with all the other commercial buildings around it and keeps the town out of litigation.

Thorn stated that the Board has the ability to place conditions that will make the variance granted less of an impact.

Torpey asked about future consequences of purchasing the right of way back from the State. Duvall stated that in his conversations with them, the State has no plans of any future work on 5&20 as it's been deemed a scenic highway.

Babcock asked who told the surveyor to place the structure on the subdivision map? And asked how many meetings there were, Rayburn stated it went through 2 meetings in front of the Planning Board. Thorn stated the surveyor should have known the state and Town regulations regarding setbacks and it was missed by many.

Another discussion was held on the setback and the request of a 30 ft variance.

The Board discussed keeping the public hearing open to allow Duvall to contact their neighbors, they would like to follow the proscribed procedure. All Board members present agreed.

Babcock motioned Garlapow seconded to adjourn the public hearing and keep it open until the next ZBA meeting. All Board members present voted aye. Next meeting scheduled for November 9<sup>th</sup>.

The Board then started their review of the State mandated five (5) criteria tests.

1. **Undesirable change to the neighborhood:** Torpey stated that all surrounding properties/structures are closer to the right of way and are commercially zoned properties. Babcock stated that this is a major intersection and they should make sure that whatever happens there has no safety concerns as it is a state highway and they travel at a faster rate of speed. (Duvall stated the State did a traffic study before they were given their driveway permits with a 600 ft sight distance.) Garlapow stated its keeping with the surrounding businesses that are currently there and there have been no current traffic issues.
2. **Alternative method:** Structure is already built
3. **Substantiality:** Request would be considered substantial, however structure is built
4. **Impact on the environment:** N/A
5. **Self-creation:** Considered self-created although multiple Boards and people looked at the placement of the structure before it was built.

The Board discussed the setback once more and Babcock stated he feels the structure is more like 95 feet off the centerline than 105. A new survey would tell exactly where the barn is. Duvall stated they would not pay for another survey. Babcock stated it is important to make sure the measurement is accurate to do a complete review. Garlapow stated that the code does not say a survey is required. Thorn stated that the Board has the right to request one.

Duvall stated that they are happy to send out the letters and come back on the 9<sup>th</sup>, but they are not going to pay for another survey. Torpey stated that the Board does not know what the actual as built distance is. She stated that Rayburn had calculated it to be 30 feet off of the right of way and they would like to know it that is correct. Thorn stated he would rather be accurate in granting a variance vs granting one that is inaccurate. Babcock stated more time to do some fact finding wouldn't hurt. Torpey asked if the Town has someone on staff that could provide the measurement, Rayburn stated we do not have a surveyor on staff. Garlapow asked what the risk is that we are trying to cover by requesting a survey. She asked if the 45 feet is off what is the risk. Garlapow stated the applicant is requesting 45 feet so it would be a risk to the Town not the applicant.

Duvall stated he is looking to keep the Town out of a lawsuit, so has has done everything the Town has asked of him up to this point. They are looking for the variance for the structure that is already built and approved by the Town. Torpey stated that Duvall is not on trial and they know the Town is culpable in this situation. Babcock stated that they are not trying to make it harder, but went on to give an example of the DuVall's wanting to borrow money and they want to use this existing building as collateral and then they require a survey and they find out you are in setback violation. Duvall stated he has a loan from the bank and they have already signed off on all of this. Babcock stated that if for any reason in the future someone needed a loan and they request a survey and the Board gave a variance for 30 ft when it actually needed a variance for 40 feet, they will call up the Town and the Town would have to go back and

address the issue again. He stated the Board just wants to dot their I's and cross their T's. Duvall stated he would take any variance they want to give he believes he needs 45 feet from the distance on the survey. Babcock stated the survey says proposed farm stand its not exact, therefore we do not know where the stand was actually staked and built. Babcock stated if the Board wants a survey, they can ask for one. Duvall will not pay for an as built. Babcock stated the Board is left to approximate.

Torpey stated that Duvall has stated his position and its now up to the Town to decide what we want to do to characterize the situation and decide what the set back is. Whether the Board finds someone to give an accurate measurement or if we go with what is being requested and approximated Duvall can't answer that for us. She stated that at this point we have hashed this through thoroughly.

**Torpey motioned Garlapow seconded to adjourn until the pending meeting on November 9<sup>th</sup> and in the mean time determine amongst the Board and Rayburn how the Town want to approach this.**

**Record of Vote:**

Babcock **Aye** Thorn **Aye** Torpey **Aye** Garlapow **Aye**

**All Board members present voted Aye, Vote was carried unanimously.**

**IV. Meeting Adjourned**

**Torpey motioned Garlapow seconded to adjourn at 9:00 pm. All Board Members present vote Aye to adjourn meeting to November 9<sup>th</sup> 2022**

Respectfully submitted,

Christel Daggett

Planning & Zoning Secretary