

## TOWN OF EAST BLOOMFIELD

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### Zoning Board of Appeals April 10, 2019

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

**Others Present:** Kim Rayburn (Secretary), Jim Kier (Code Enforcement Officer), Carol Stratton, Brennan Marks from Marks Engineering (Agent for Spencer) Esther & John Dillman (neighbor, Oakmount Rd)

**Babcock opened the meeting at 7:30 pm, public hearing opened by the reading of the notice.**

**I. Review TV3-19** for Owner Carol Stratton property located at 7251 St Rts 5&20 has applied for an expansion to a non-conforming structure that currently does not meet today's setback regulations for a principal structure. **135-33 Expansion of nonconforming uses and/or structures** *The expansion of a nonconforming use or structure hereunder shall be subject to approval by the Zoning Board of Appeals and each case shall be considered on an individual basis.*

Babcock asked Stratton to explain her proposal, Stratton stated that she is proposing to erect a small addition approximately 21 +/- ft x ft. Her bathroom is very small and her mother walks with a walker she would like to enlarge the bathroom and add on a pantry off of the existing kitchen. This location is ideal as the plumbing is there. She also has water issues and would like to install a curtain drain around the addition to eliminate water from entering her foundation as there is a hill behind her house.

Babcock stated that the proposal doesn't follow the area variance regulations. The standards are written in the code under section 135-33. Although the area variance application and questionnaire are not required, they were turned in and completed, the Board stated they can use this information to make their decision.

The standards they will review are: location, size, intensity, access, and screening. The Board also needs to determine if the proposed will not be inconsistent with the orderly development of the district in which the use is located. The property is located in the Town, but is on the Town / Village line. Babcock stated that the size of the existing house and the size of the addition are not outside of the character of the neighborhood, as for buffering Torpey felt that there aren't any objectionable aspects, Thorn stated that the addition is set back further from the road than the existing structure and it's also setting between two structures, the current house and the garage. Babcock noted there is an existing tree line on both sides of the property and in the front. The addition will be matched as close as possible to the house. Babcock asked if Stratton knew how old the house is, she stated it was built in the 1800's. Kier stated that he gave Stratton Glen Thornton's name after seeing her basement wall that is bowed in, Thornton stated the wall could have been like that for fifty (50) years, its safe however diverting additional water from the area is a great idea. Thorn was originally concerned about diverting the water, but he now feels after seeing the proposal that's its being diverted back to where it is supposed to go, the natural drainage. There is no change to the access or parking for the property.

Babcock asked if she had to move any utilities, Stratton stated she does not. Babcock asked about public easements, Stratton stated there are none. The property does have public water and sewer. Stratton stated that she has already contacted dig safely and the new addition will be behind any of the utilities.

Rayburn read comments from the Planning Board; they had no objections other than to say it is self-created. They felt it was the best location due to the topography of the land and the water issues and they feel it will enhance the house. Babcock one again stated this is not an area variance so self-creation does not come into play. There were no comments from the neighbors. Babcock asked when she planned on starting the project, Stratton stated she will begin construction within six (6) months if approved.

Thorn made a motion and Torpey seconded the motion to close the public hearing, all Board members present voted Aye, Vote was carried unanimously.

SEQR- Type II, no further action is required.

Thorn made a motion Torpey seconded the motion to approve TV3-19 for an expansion to a non-conforming structure Owner Carol Stratton, property located at 7251 St Rts 5&20.

Whereas:

1. The four (4) applicable standards listed in 135-33 A have been sufficiently met for an expansion to a non-conforming structure.

**Record of Vote:**

**Art Babcock Aye Mark Thorn Aye Sonja Torpey Aye Tim Crocker Aye Rosemary Garlapow Aye All Board members present voted Aye. Vote was carried unanimously.**

**II. 8:00 TV2-19 Area Variance:** Owner David Spencer (agent) Marks Engineering property located at 7203 St Rts 5&20. Applied for a Special Use Permit and an Area Variance to erect two mini storage structures. They are asking for a 50 ft setback where a 75 ft is required.

**8:00 pm public hearing opened by the reading of the notice.**

Brennan Marks stated that the neighbors were notified, but he does not have the receipts with him, there are neighbors in the audience that did receive the notice, and a public hearing had been scheduled more than once. Marks stated that the location of two (2) new storage buildings is located in the south of the property located on the corner of Rts 5&20 and Oakmount Rd. There is currently an existing Commercial structure that houses a landscaping business (owned and operated by Davis Spencer) and a beauty salon. There is a substation to the west of the property and a neighbor to the south and a used car lot across Oakmount Rd. The proposed buildings are wood pole structures that will house twenty-six (26) units, there will be a gravel pad around them, new storm water infrastructure to collect and detain storm water with underground retention. There will need to be some grading as the property is not flat, six (6) feet will be cut into on the south side with a stack stone revetment, and filling around six (6) feet on the north side. A new entrance off of Oakmount Rd will be installed. The Town Engineer made a suggestion of buffering on the south and west side, Spencer is willing to put up some arborvitaes in that area to create a natural landscape buffer. A gravel hard packed surface is requested.

The structures will be a maximum height of twenty-four (24) feet, they will be earth tone in color with metal siding. Another comment was about security and privacy fencing, Marks stated that privacy fencing will be accomplished with the natural buffer, security fencing will only be erected if the planning board wants it to be as it may be more of an eyesore. This request is for a front setback from Oakmount Rd. seventy-five (75) feet is required they are requesting a fifty (50) foot setback so a variance of twenty-five feet is requested.

Babcock asked for comments from the public, Esther Dillman who lives to the South of the property stated that they have lived there since the 1950's when the road was dirt, now it is a Thorofare with a lot of traffic. She stated that someone is dumping trash on the property, and also the landscaper is dumping tree stumps and debris from properties he's doing work on. There is concrete and a feral cat is living in the debris. Dillman showed picture of the property in its current state. Babcock asked Kier about the debris, Kier stated that some of it is considered clean fill but he will have to look into it. She also stated a previous owner buried some vehicles on the property. John Dillman asked about lighting, he stated that arborvitaes are not a great light blocker. Kier stated that any lighting is required to be dark sky compliant, the light will shine down not out like a flood light. Dillman stated that his parents' bedrooms are on the at side of the house, so they are concerned. He also wanted to know about the hours of operation. Marks pointed out that the house is one hundred and seventy-seven (177) feet away from the proposed buildings.

Babcock stated that what the Zoning Board is empowered to review is just the setback request, he stated that the Planning Board will hold a public hearing for the Site Plan/Special Use Permit that will cover lighting, screening and hours of operation. He also stated that the Zoning Board would allow them time to bring up anything they think might affect their decision or items they want the board to consider as far as the setback is concerned.

Babcock asked Rayburn for the Planning Boards review of the area variance, Rayburn read the motion was from the Planning Board.

The Board then held a discussion on the request and reviewed the five (5) criteria.

**1. Undesirable change in the neighborhood** ~ Thorn stated there are possible undesirable aspects that can be remedied, he also stated that the Planning board has the ability to impose reasonable conditions that could correct some of these as far as lighting and buffering. Babcock stated it is zoned for the use. The property used to be zoned AR-2, with a pre-existing non-conforming use, he believes it was a car lot owned by Lord Brothers, but there had been multiple uses for the property. The property across the street was re-zoned by Marianacci so the Town re-zoned this piece as well to bring the property into current compliance. Babcock also stated that this is a very small district of Community Commercial, its 2 parcels surrounded by AR-2 and fronts on the 5&20 corridor being a main Thorofare. The property line on the south side where the buildings will go is on a district boundary line. Typically, when the Planning Board reviews site plans, they would be mindful of buffering from one district to another as the uses are different. He doesn't feel its an undesirable change, but it's a change that happens abruptly that may need screening. Torpey stated she is curious about the berm/buffering. Marks stated it would be six (6) to eight (8) foot arborvitaes. Thorn asked if the fixtures for lighting are picked out, Marks directed them to the lighting specs in the application. Focused downward light that barley gives light fifteen (15) to twenty (20) feet outwards on the ground. There will be two (2) on the long sides and one (1) on the ends. There won't be any pole lights. Dillman stated that there is security fencing around most of the other storage buildings in Town. Babcock stated that a lot of other storage facilities have a gate and access is restricted to storage renters that have obtained a code.

**2. Alternative to a Variance** ~ Thorn stated that at the last review it was decided that it would be difficult to put the buildings anywhere else due to the grading and the topography of the property. The back of the property slopes off making it very difficult to push the buildings back any further. Marks stated that they need to maintain access around the buildings for vehicles. There is a little bit of space in the rear that Spencer was planning on using as storage for outside vehicles. Torpey asked if it's the slope or the outdoor storage space that limits them from moving the buildings back, Marks stated it is a combination of both and they think aesthetically it looks better to match the existing setback of his existing building on Oakmount Rd. Mrs. Dillman stated that she's always been told the Town does not want cars anywhere near the water table, why is outside storage ok. Marks stated that it would be written in the contract that if there were any discharge of any liquids the vehicle owner would be asked to remove the vehicle immediately. Thorn asked if there was going to be a limit to the number of vehicles, Marks stated that there is not, just an area designated for it. Marks stated that it's easier to designate space as its hard to classify vehicle. A Camper a car a boat, etc. could be stored outside. Garlapow asked if the buildings could run length wise, Marks stated they are oriented this way for traffic flow and fire access. Mr. Dillman stated he would not want them lengthwise as the car lights would be facing their home and the proposed is the lesser of two evils. Garlapow asked if there is enough room for outdoor storage as they need thirty (30) feet for access around the property. Babcock asked Marks to discuss what the distances are and what the code is. Marks stated that a ten (10) foot stand off the building and a twenty (20) foot fire lane is required around the building. Thirty feet drive isle for maneuver ability of vehicles, a normal width of a street is between twenty (20) and Twenty-four (24) feet. The outdoor storage will be eighteen and a half (18.5) feet. If you remove the outdoor storage, which would affect the business model they would still need a seven (7) foot variance, and they were trying to keep in harmony with the other structures set back on the street. A discussion was held on moving the storage to the north side, there a fifteen-foot drop, that would cause an undue burden on the applicant to widen the pad and keep the thirty (30) foot access. A discussion was held on snow removal, Marks stated it would be delegated to the outdoor storage areas or hauled off. Babcock stated an alternative would be to shorten the buildings. Marks stated it would affect the business model.

**3. substantiality** ~ Thorn stated it's all in your version of what is considered substantial. Marks stated that other uses in the Community District or Industrial District allow a fifty (50) foot setback. Marks feels it is not substantial as there are other structures on the property and in the neighborhood that set back fifty (50) feet instead of seventy-five (75) feet.

**4. Impact on the environment** ~ A discussion was held on the storm drainage, it is being taken care of with underground retention. A brief discussion was held on paving vs hard packed stone surface. Babcock asked Marks if they were held to the seventy-five (75) foot setback, what changes would they make. Marks stated that first he would have to look at the economics. This plan is the best plan and the most economic. Garlapow stated that eight units would be lost if they shortened the buildings, Marks stated that could really hurt the project. Babcock stated that fire safety is covered and the ingress and egress is suitable for traffic therefore he does not see an impact on the environment.

**5. Self-Creation** ~ Thorn stated that the proposed is self-created, as it does not conform to code, the Board agreed.

**Thorn made a motion and Torpey seconded to the motion to close the public hearing. All Board members present voted Aye.**

**SEQR is a type II, no further action required.**

Babcock asked the Board for any further comments, Crocker wanted to know how tall the south southern wall would be, Marks stated that the pad will set at 1067, Marks stated it's a one on one slope, Babcock stated it is like a forty-five (45) degree angle. Torpey is trying to understand the original intent of having a seventy-five (75) foot setback. She asked if it is because of the need to do significant construction on the roadway they would have enough room? And she also stated that since there are other structures sitting at or around fifty (50) feet that would not matter as the room is already gone. Thorn stated that is where the substantiality comes in. If this were on a property of its own and there were no buildings closer than seventy-five (75) feet then he would consider it to be substantial, but since the surrounding buildings are also closer, he does not feel the proposed is substantial. What does bother Torpey is the outdoor storage, its kind of in a blind spot out there and she feels this property owner doesn't care about how this property looks by the pictures shown to the Board by the Dillamn's. Thorn asked about the hours of operation, Kier stated that will be covered by the Planning Board and if it becomes an issue and people are in and out all hours of the night then something will be have to be done. Babcock stated he doesn't feel that it will be a detriment to the neighborhood, however as he stated before it is a district line and he feels the neighbors should be able to enjoy and use their property. Torpey stated it will be an improvement of what is there now. Thorn stated that the proposal is zoned for this purpose, we are only allowed to discuss the placement of the buildings. Garlapow does still have a concern for the undesirable change to the neighborhood, as the property owner may not be in compliance with certain codes now, and a thirty three percent request is substantial. What if these buildings become noncompliant, she worries how would it be handled. Rayburn stated that the ZBA can only look at the placement of the buildings as being undesirable, not the project itself. Marks stated he doesn't believe Spencer knows if he is doing anything wrong with the dumping. Kier stated its his job to deal with any code violations if there even is one. Crocker mentioned screening; Marks stated that the natural screening will start 8 ft above the ground where the buildings will set.

**Thorn made a motion and Crocker seconded the motion to approve the requested variance TV2-19**

Owner David Spencer (agent) Marks Engineering property located at 7203 St Rts 5&20. to erect two mini storage structures at a 50 ft setback where a 75 ft is required.

**Whereas:**

1. Whereas they do not feel the setback would be undesirable as there are similar structures with the same setbacks, making the project uniform with the neighborhood. It does not have significant traffic issues and the lighting will be dark sky compliant

2. Whereas there are alternative means but not too large to restrict the property in order to adhere as it would be costlier and a financial burden on the owner
3. Whereas the Board considered the substantiality of the variance, there are structures on the property and in the neighborhood that have similar setbacks, therefore they do not consider the request to be substantial
4. Whereas there is no threat to the health, safety and well fare to the community
6. Whereas this is self-created
7. Whereas the property is unique and has identifying characteristics
8. Whereas the Zoning Board understands that part of the site plan process is to address screening to the south by the Planning Board in the review for the special use permit.

**Record of Vote:**

**Art Babcock Aye Mark Thorn Aye Sonja Torpey Aye Tim Crocker Aye Rosemary Garlapow Aye  
All Board members present voted Aye. Vote was carried unanimously.**

**II. Minutes of February 27, 2019**

**Torpey made a motion and Thorn seconded the motion to approve the minutes from February 27 ,2019, All Board members present voted aye, with the exception of Babcock who was not present at the 2/27/2019 meeting.**

**II. Meeting Adjourned**

**Babcock made a motion and Garlapow seconded the motion to close the meeting @ 9:45 pm. All Board members present voted aye, Vote was carried unanimously.**

Respectfully submitted,

Kim Rayburn

Planning & Zoning Board Secretary