

# TOWN OF EAST BLOOMFIELD

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June 23, 2021

**Zoning Board of Appeals Members Present**, Art Babcock, Mark Thorn, Rosemary Garlapow.

Call in: Sonja Torpey needed for review of Item II.

**Absent:** Tim Crocker

**Others Present:** Kimberly Rayburn (Secretary), James Kier (Building & Zoning) Todd & Jennifer Haran (Applicant) Allen & Ellen Fish. Kimberly & Robert Dauphinais and Greg McMahon (McMahon LaRue Associates P.C., Agent)

Babcock opened the meeting at 7:15 pm with the Pledge of Allegiance.

**I. # TV2-2 Area Variance** for Kimberly & Robert Dauphinais (Owner,) Greg McMahon (McMahon LaRue Associates P.C., Agent) Lot R-7c of Rabbit Run Tax map # 67.03-1-7.300. Requesting a 5.06+/- variance to the side setback. Requesting 44.94 feet where 50 is required.

Greg McMahon from McMahon LaRue Associates P.C spoke for Kimberly & Robert Dauphinais the buyers of lot R-7c on Rabbit Run. McMahon stated that this lot has challenges, but the buyers are willing to face them as they have family that is adjacent to this lot. The site plan was done in such a way to keep the house away from the natural water runoff that runs across the property from the Northwest corner across the lot and ends up in the swale by the road. The lot is pre-existing non-conforming to today's lot size. The zoning for Rabbit Run changed after the subdivisions were done. They are requesting a six (6) foot variance and requesting a forty-four (44) foot setback where fifty (50) is required. They picked the area on the parcel to place the house due to the slope of the land. The further you go up the hill the higher the driveway slope becomes. Garlapow asked about the front setback, McMahon stated they are beyond the required seventy-five (75) feet at eighty (80) feet. Garlapow asked about moving the house four (4) feet to the east. McMahon stated that they rotated the house parallel to the front property line. They would need to do a lot of grading and get into the swale. This is the best location for the house. They are looking at the area behind the house for the septic system. A discussion was held on how far that had to be from a property line. The NYS Health Dept. states that the septic leach field needs to be ten (10) foot off a property line, one hundred (100) feet from a well and twenty (20) feet from the house.

Thorn asked how close the house was to the nearest residents. McMahon stated that the Northeast corner of the proposed house will be one hundred and seventy (170) feet from the property line and the Southwest corner will be one hundred and ninety-five (195) feet. Babcock asked if the footprint of the house shown on the map is the actual footprint. McMahon stated that it is. This map will also be a site plan map and they will be ready to apply for a building permit. McMahon stated that he checked with the Health Department on the previous perc test. Cheryl stated they had to be within the last five (5) years, Kier also requested new perc's to be done. Cheryl from the Dept of Health stated that new deep holes would not be required as they were reviewed once. New perc test was completed. Babcock stated that in 1987 the original lot was larger when the perc's were done and it had a proposed house on the map when a subdivision was done.

This is one of the bigger lots at 1.79 acres. Then after the subdivision the zoning changed to AR-2 with a 2-acre minimum lot size. The original zoning required twenty thousand (20,000) square foot lots with a lot width of one hundred and twenty (120) sq ft and a side setback of fifty 50 feet. Babcock noted that this is one of the last lots to be sold and one of the hardest to build on. McMahon stated that if Dauphinais didn't share a lot line with his in laws he may not be interested in the lot as well. Babcock stated this is a unique lot with the grade and slopes of the land its not considered a standard building lot. Babcock stated that the Planning Board pointed out their concern with the steepness of the driveway. Kier stated he had the Fire Chief, (Peter Koppmann) look at the proposal. Koppmann stated that due to the location of the hydrants they would keep the truck on the edge of the road and not go up the driveway. Babcock discussed the need for an ambulance to get up the driveway, especially in the winter. Due to the steepness of the driveway which is at fourteen (14) %. McMahon stated they reviewed all their options and many locations for the driveway and this is the best they could come up with. Babcock stated that a portion of the driveway

at the top needs to be flat. McMahon stated that the main portion is 12% steep slope, then it flattens to 4%. Babcock then stated that they are here to look at the side setback without modifying anything further. Kier stated that the buyers are choosing to live with it. Babcock asked for any further questions, there were none.

**Thorn motioned and Garlapow seconded to close the public hearing. All Board members present voted Aye. Vote was carried unanimously.**

**Babcock motioned and Thorn seconded to declare SEQR a Type II, with no further action required. All Board members present voted Aye. Vote was carried unanimously.**

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

1. **Undesirable change to the neighborhood:** The Board feels it does not alter the character of the neighborhood. Previous lots have had the same issue with the side setbacks.
2. **Alternative method:** With a slightly different house plan they may not have needed a variance but it would have required more earth work. Therefore, the difficulty in the land layout makes the proposal acceptable. The Board feels that after reviewing the application the location is reasonable and it makes sense.
3. **Substantiality:** The Board does not feel that a five to six (5/6) foot variance is substantial.
4. **Impact on the environment:** By putting the structure where it is going, they can avoid getting into the natural water run off/swale.
5. **Self-creation:** The Board feels this is self-created.

**Thorn motioned and Garlapow seconded to approve the area variance for Kimberly & Robert Dauphinais (Owner,) Greg McMahon (McMahon LaRue Associates P.C., Agent) Lot R-7c of Rabbit Run Tax map # 67.03-1-7.300. Requesting a 5.06+/- variance to the side setback. Requesting 44.94 feet where 50 is required.**

Whereas:

1. The proposed meets all the criteria reviewed except for self-creation.

**Record of Vote:**

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

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

**II. # TV3-21 Area Variance** for Fish Family Wealth Trust (Owner,) 3142 Flatiron Rd. Tax map # 95.00-1-61.111. and (new owner) McCombs of 3406 Flatiron Rd. Fish wishes to convey 0.760 acres with a barn to 3406 Flatiron Rd. Requesting a 20-foot setback for the barn to the rear lot line when barn and land are conveyed where 50 feet is required. Fish wishes to preserve his agricultural (Ag) land as it presently exists.

This review will require another Board member as Babcock did the survey and he will abstain from voting. Crocker attempted to join by phone but was not up to date on the proposal. Torpey was eventually able to call in to be included in the review.

The Board opened the public hearing at 8:00pm, the reading of the public hearing notice was waived.

Babcock stated that before zoning back in the 70's Fish subdivided off a one (1) acre parcel for McCombs. Fish has Andy Rogers farm his land for him and he would like to retain as much of the agricultural land as possible while annexing the barn into McCombs's property. Babcock stated that in driving by he thought that the barn already went with the McCombs property as it looks like it should. The new back property line will set the barn at twenty (20) feet where fifty (50) is required. Torpey asked how long the barn had been in its location, Fish stated it has been there for over fifty (50) years.

There is no other public in attendance, there are no known objections and the applicant has met the requirements for neighbor notifications.

**Babcock motioned and Thorn seconded to close the public hearing. All Board members present voted Aye.**

Garlapow, Thorn & Crocker then started their review of the State mandated five (5) criteria tests.

1. **Undesirable change to the neighborhood:** The Board feels it does not alter the character of the neighborhood.
2. **Alternative method:** There is an alternative, but the Board feels that after reviewing the application the proposal to keep more agricultural land in production outweighs any other alternatives.
3. **Substantiality:** The Board does feel it is substantial, but the applicant does not have to meet all of the criteria.
4. **Impact on the environment:** no change
5. **Self-creation:** The Board feels this is self-created.

**Babcock motioned and Thorn seconded to declare SEQR a Type II, with no further action required. All Board members present voted Aye. Vote was carried unanimously.**

**Thorn motioned and Torpey seconded to approve TV3-21 Area Variance for Fish Family Wealth Trust (Owner,) 3142 Flatiron Rd. Tax map # 95.00-1-61.111. and (new owner) McCombs of 3406 Flatiron Rd. Fish wishes to convey 0.760 acres with a barn to 3406 Flatiron Rd. Requesting a 20-foot setback for the barn to the rear lot line when barn and land are conveyed where 50 feet is required. Fish wishes to preserve his agricultural (Ag) land as it presently exists.**

Whereas:

1. The proposed is self-created.
2. The proposed preserves Ag land within the Town.
3. The proposed will not be noticeable in anyway.

**Record of Vote:**

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

**All Board members present voted Aye, with the exception of Babcock who abstained. Vote was carried.**

**Thorn motioned and Garlapow seconded to adjourn at 8:35 pm. All Board Members present vote Aye. Vote was carried unanimously.**

Respectfully submitted,

Kimberly Rayburn

Planning & Zoning Board Secretary