

# TOWN OF EAST BLOOMFIELD

---

---

## Zoning Board of Appeals June 24, 2020

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

**Absent:**

**Others Present:** Kim Rayburn (Secretary), Jim Kier (Code Enforcement Officer), James Spelman (Applicant), James Nardozzi, Michael Nardozzi, Victoria Duncan, Tane Talbot, Todd and Kathy Robinson

**Meeting took place on a WebEx online meeting. Meeting was posted on the Town Website and in the local newspaper as well.**

**Babcock opened the meeting@ 7:30 pm, Rayburn read the Public Hearing notice, the Public Hearing was opened. Rayburn reviewed the neighbor notification letters.**

### **I. TV4-20 Use Variance with an addition to rear structure, property currently operating under a use variance. James Spellman 6600 Rice Rd tax map # 54300-1-16.121/IDA**

Spelman stated that twenty-three (23) years ago his dad sat in front of the Board to obtain approval for his business, unfortunately last July there was an employee injury that caused them to close. Since then he has been making steps forward to market the property. He looked into lease and sale options. The only offer that came close to doing similar work as them was the Nardozzi family. They will utilize the office and the warehouse space for storage of materials and equipment just as SDC did, however they won't have the light woodworking shop so he feels it will be less of an impact that his was. Spelman had an installation crew that was coming and going at night, whereas the Nardozzi's will work during the day. They do municipal construction as well and may get an occasional off hour's call. The only changes to the property would be a 40 x 80 addition onto the back side of the back building closest to the house which the Nardozzi's would be purchasing as well as the agricultural land. The addition would be necessary for them to get their equipment inside for repairs. The IDA is on board with the proposed plan. There is twenty-three (23) years of existing buffering in place, some of the east buffering would be relocated to the west end of the back building along with the three-sided outdoor storage structure. Not much would change except the logo. Spelman stated that he had an established family business and would like it to remain that way. He also stated that the Nardozzi family will be purchasing the business lot, the ag property and his house. Spelman plans on staying in Bloomfield, and he would like to see the property remain a family business. Spelman stated he has visited the Nardozzi site in Geneva, it is very neat and organized. Spelman stated that this property is a financial issue for him and he's been walking through the plan with Kier and Kimball the Town Highway Superintendent.

Jim Nardozzi stated that his Company is a small-town Ontario County family run business that has grown and they take pride in everything they do as their name is on all the trucks. They would like to set down roots and become part of the community. They searched for properties in Wayne County but it seemed foreign to them as they were born and raised in Ontario County. They looked at Seneca County and Farmington but when they found this place, they felt it was built on the same values and they are hoping to become an asset to the Town. They feel the business is not much different than what it was. As stated, before they will still utilize the buildings for storage of materials and equipment and utilize the office space. The only difference is that they have will more outside storage of equipment in the rear than may have been before.

Babcock asked for any public comment, Tane Talbot stated that he purchased the Helen Jordon farm five (5) years ago, his main concern is traffic. He stated that a construction company will bring a lot of trucks and equipment, also he has a concern with the water quality if they are working on equipment on the property.

Nardozzi stated that there are truck routes on all four sides of where the property is located, and they have four (4) field office locations and seven (7) staging areas. Most of the equipment will be on job sites and not stored at this location. The facility will be used for stock inventory of small parts and pieces of equipment similar to that of a farm. The employees report to the job sites, other than the office employees. Fifteen (15) people would work onsite with small minivans and SUV type vehicles. Equipment will be on site if it needs repairs. They won't be affecting the water quality; repairs will be done inside on a concrete floor with standard oil changes and there are currently two (2) oil separators inside the building.

Talbot stated he's concerned about tar/oil and cleanliness, and the percentage of environmental impact. Nardozzi stated that the days of diesel release are gone, cleaner is citrus based and water soluble and is not stored on this property they have two (2) field tanks. Talbot stated that he's concerned that what is proposed will start small but then get bigger and what impact it will have on the road and the daycare located at the corner. Spelman stated that Holly who runs the daycare has been informed and that his office space is and will remain a NYS approved evacuation site for her business.

Todd & Kathy Robinson live next door and have been watching the property develop over the years. They feel the hours of operation are different than what was approved at the time. Todd states that the tar from the equipment will leak into the ground contaminating the water. He's also concerned about the truck traffic. Nardozzi stated that their hours will be from 7:30 am to 3:30 pm, and restated that the petroleum days are over. Nardozzi stated that the well is three-hundred feet from the storage area so he would be poisoning himself and his family and he would not do that. Robinson stated that in the spring time there is a part of his lawn that he can not mow because its too wet from runoff from Spelman's property, and he feels the water should be directed to the ditch. Robinson stated he feels that the property has and will continue to devalue his property.

Babcock stated they would leave the public hearing open; he then went on to ask what the Zoning Board would be undertaking. He does not feel they are being asked to modify an existing use variance and that they are being asked to review a new variance. He gave the history of the existing Use Variance. Spelman was granted a Commercial use Variance and if Nardozzi has a Commercial Use then he would not need to be in front of the Board.

Kier stated that the use of the property is very similar in nature, even though the scope of work is very different. He stated that the outdoor storage of equipment was different than the current use and he felt it required a review. Torpey asked if there is something in the code to evaluate the business changing hands, Kier stated that it falls onto the Code Officers scope and view. Torpey stated that a highway paving construction companies' prime component are allowed in the General Industrial District and that the intent of the existing use variance is for a commercial use. Spelman stated that this would be a new Use Variance.

Babcock stated that they are looking at the code to see where this type of business would be allowed without a use variance. Babcock also reviewed the verbiage from the original motion and stated that they are not being asked to review whether that decision was legal or to modify the existing Use Variance for a commercial Business. Spelman reiterated that the property could be used for whatever is listed as allowable in the Commercial District. A brief discussion was held on the light Industrial district. Babcock asked if they were being asked to review a General Industrial use in an AR-2 district, Crocker stated it's a big jump from AR-2 to light Industrial or General Industrial. Babcock stated that in 135-46 under the Community Commercial District under B. Permitted Principal Uses number (13) allows woodworking shops, although it seems the business has expanded past what was discussed in the 1997 meeting minutes and motion. He also stated that they did not limit the use to a specific use they left it wide open for any Commercial Use that is permitted.

Garlapow stated that she does not see a difference in the scope of work as you have a construction company doing big jobs that has been allowed for over two decades and another one trying to come in to do the same with less employees. Kier stated that the majority of their equipment is off site and only to be onsite when not being used or when it needs to be repaired or maintained. Garlapow stated that its different types of equipment but how is

much different that what was going on before. Babcock stated that what was going on before may not have been a commercial use.

Spelman stated that they did general construction, small building additions, manufacturing/mill work. Garlapow asked him to clarify mill work, Spelman stated they built cabinets, adhesive finishes, and Corian they also did drawings of the nuts and bolts of a project, sub assembly drawings and then manufactured the equipment, such as church pews and head walls for hospital rooms.

Torpey asked Nardozzi to explain how he would use the property, he stated they would utilize the office space for surveying and administrators and their assistants working from 7 am to 5 pm. They will also utilize the indoor storage of parts and equipment and space for indoor equipment repair, some rear outdoor storage as well with screening. They have five (5) field offices and their equipment is kept and used in the field, some of their equipment has not been back to a shop in two (2) to three (3) years. They will work on their own equipment they are not for hire and they will do oil changes, tire rotating, washer fluid things of that nature.

The paving Company is Central Roadways and they are a silent partner. The paving equipment is located at Salt Rd. and there will never be a paver in Bloomfield. They will have tractors of 100 to 150 horsepower, skid steers, light pickup trucks 450 to 550, excavator, rubber tire tractor front loader, equipment relocation tandem axle trucks which are much like a farmer moving hay bales, except they move equipment. They feel it will be very similar to what was there, and they will work Monday through Friday with the occasional emergency for municipal work.

Talbot asked about traffic and noise, how many trucks in and out and asked about the equipment relocater. Nardozzi stated that they do not have dump trucks coming in and out only employees arriving and leaving at the start and end of each day. They work normal hours 7-3:30 with office staff 7-5 pm. On occasion maybe 5-10 times a year they will get called for a water issue, it could be the Town of East Bloomfield and as stated previously ninety percent (90) is offsite. He also stated he was zoned Commercial in Geneva.

Garlapow stated that Spelman did engage in manufacturing and Nardozzi will not, there will be less employees and a reduction in employee traffic and feels it would be less of an impact overall. Nardozzi stated that the equipment they use is comparable to what you would see on a farm, and when its on site its there to be worked on. He also stated they are considered essential by the state of New York and does work for public utilities which depending on the year can be 40 to 90 percent of their work. Garlapow looked at section 135-46 D, Special Permitted use in the Commercial District.

### ESSENTIAL SERVICES

The erection, construction, alteration or maintenance by public utilities, or any government department or commission, of underground or overhead gas, electrical, telecommunications or water transmission and/or distribution systems, including poles, wires, drains, sewers, pipes, conduits, cables, towers, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishings or adequate service by such public utilities or municipal or other governmental agencies or to the public health or safety or general facilities or sites for the disposal of waste materials associated with the provision of such services.

Torpey discussed the outdoor storage, Nardozzi stated that it would be directly to the North behind a ten (10) foot stockade to minimize any impact which is located behind the rear building to the north. Torpey asked if they work twelve months out of the year, Nardozzi stated that they no longer do snow removal, and deliveries would be for parts deliveries/water main parts, normal business paper products by ups or FedEx, a courier service for document deliveries or pick up. Job materials which are bulky in nature would be delivered directly to the job site. They are back up for water main work and parts for Canandaigua, Victor, the Monroe County Water Authority, Thompson health, and soldiers and Sailors Memorial Hospital in Yates County.

Babcock stated that the Nardozzi Construction Company does not fall under the heading of what is an essential service by our Town Code/Definition. It does not include the contractor doing the work for a utility or government agency. Thorn agrees its not written to include contractors.

Babcock then redirected the Board to the question what are they reviewing, Thorn stated that what is proposed is a General Industrial use in an AR-2 (Agricultural rural residential) District. Crocker stated the proposed use does not fit under the existing Community Commercial Use Variance, as it's a General Industrial use.

Garlapow again stated we would be hard-pressed to eliminate contractors from essential services, and states the use would be less industrial than what is was happening on the site. Babcock stated that the zoning does not allow for Light or General Industrial the fact that they may have used it for something other than Commercial is another story, but he does not see that as being germane as to how the Board reviews the proposal. Babcock also stated that the Town needs to define where the use is allowed for outdoor storage and construction vehicles that are stored and maintained and the only place they are allowed is the General Industrial District, and essential services listed in NY State now due to the Covid-19 pandemic is not the definition we are following. We need to follow the definition of our Town Code. A subcontractor is not listed as an essential service in the Town Code. The Nardozzi's would be a subsidiary of a public utility, and that's not all they do in their business.

Torpey suggested they adjourn the meeting so they can do their due diligence and gather more information. Babcock wanted to pole the Board to see if they were in agreement on the proposed being a General Industrial Use in an AR-2 District. Torpey and Crocker agreed. Garlapow stated that the current Use Variance can still be used, so she will go along with it. Thorn stated that the Board would be doing a disservice if they based their review on past use, as it has morphed overtime from the exact intent of the original variance. He does feel the proposed use fits in with General Industrial.

Babcock asked Kier if there were any reasons that Spelman should have gone in a different direction and not needed a variance. Kier stated he understands the comments that Garlapow is making, and he also understands all the other comments from the Board, the outside storage of equipment is why it was sent to the ZBA.

Torpey stated that the nature of the current/past business were left unsupervised as it morphed over time to manufacturing and construction work. Garlapow stated that the proposed fits in better with existing variance that what was there. Thorn stated the largest usage is office space, as far as the construction equipment goes the Commercial District only allows storage as follows: 135-46 Community Commercial District

C.

Permitted accessory uses and structures.

[Amended 8-22-2016 by L.L. No. 2-2016]

(2)

Private garages and storage buildings which are necessary to store any commercial vehicles, equipment or materials on the premises and which are used in conjunction with a permitted business use.

The Board is all in agreement that the Use is considered a General Industrial Use.

Spelman stated that adjourning the meeting puts him a difficult situation as the construction season has started and they would like to get the addition up. He asked if the next ZBA meeting be moved up so they are not delayed another month. The Board stated they are free on both the 8<sup>th</sup> of July and the 15<sup>th</sup>. The next meeting was scheduled for the 8<sup>th</sup> at 7 pm.

Babcock wanted the applicants to understand how the ZBA makes a decision. He discussed 267 B of Town Law and reviewed the four (4) state mandated criteria the Board is bound to review. The applicant must provide proof of unnecessary hardship for each and every permitted use, and if one of the criteria fails then they can not grant the Use Variance. He also stated that the variance packet provided may not be sufficient in demonstrating the hardships. The hardship cannot be self-created and you need to show how it has not been. He suggested the applicants may want to study existing case law that the courts have previously reviewed to obtain an explanation of what is sufficient.

Spelman stated that an employee cut off four (4) of his fingers which caused a financial hardship through no fault of his own. He has gone through eleven months of marketing with no suitable offers, he asked how did he create those issues. He is asking for a change in use of the property so he can sell it and not just let it go and have it become a economic impact on the community. Spelman stated that no one is lining up to use the property for a Commercial Use and he is confused where he is deficient. The building is vacant he still has to pay utilities and taxes, he has expenses with no income. He had a bank appraisal that covers area sales and specializes in this kind of property. Babcock stated he suggest they talk to someone that has a better understanding of a use variance and what will be required, such as dollar and cent figures. Thorn stated he should bring that documentation with him to prove his initial investment is not getting a reasonable return, they need documented proof.

Nardozzi wanted to be clear and stated to Babcock and the rest of the Board that they consider this proposal to be light/General Industrial heavy highway construction/underground utility and work typically associated with it to only be allowed in General Industrial. He stated that he has nine (9) other business that meet the criteria for Commercial and asked if they needed any variances for that, the Board replied no there is an existing use variance for Commercial in place. He also asked how he got escalated from Commercial to General Industrial. Babcock stated he was not sure who told him that it would be considered a Commercial Business. He also stated he would provide Rayburn with a copy of the NYS Regulations and she could forward them to the both Spelman and the Nardozzi's.

Babcock asked for a motion to table the review, Garlapow made a motion and Crocker seconded the motion, All Board members in attendance voted aye, vote was carried unanimously. Babcock stated that the public hearing will remain open.

**II. Amend the motion for #TNC1-20 for an Expansion to a non-conforming structure, Owner Mark Brassie, property located at 7781 St Rtes. 5&20 tax map # 79.00-3-3.000 To add a deck to the rear of the home off the back of the approved addition.**

Babcock stated the Board needs to agree to modify the previous motion, if one (1) person says nay then it fails and it will not pass.

Babcock put it to a vote to re-open the review TNC1-20 for Brassie's expansion to a non-conforming structure

**Record of Vote:**

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

**ZBA Decision:**

**Thorn made a motion and Babcock seconded the motion to amend the previous motion of the expansion proposed of an 18 x 20 Room with a second story bedroom and deck with stairs on the rear of the non-conforming structure located at 7781 St Rtes. 5&20 tax map # 79.00-3-3.000 owned by Mark & Sue Brassie.**

**Record of Vote:**

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

**II. Motions on minutes:**

**Minutes of May 27, 2020.**

**Thorn made a motion and Crocker seconded the motion to approve the minutes from May 27, 2020.  
All Board members present voted Aye.**

**III. Meeting Adjourned**

**Thorn made a motion and Garlapow seconded the motion to close the meeting @ 10:45 pm. All Board members present voted aye, Vote was carried unanimously.**

Respectfully submitted,

Kim Rayburn

Planning & Zoning Board Secretary