

TOWN OF EAST BLOOMFIELD

Zoning Board of Appeals July 29, 2020

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

Absent:

Others Present: Kimberly Rayburn (Secretary), Jim Kier (Code Enforcement Officer), Dan Bryson & Joshua Levitt (Town Attorney), James Spelman (Applicant), John Refermat (Spelman Attorney) James Nardozzi, Michael Nardozzi (Purchaser of the property), Jeremy Shur (Nardozzi Attorney), Scott Kimball (Highway Superintendent), Neighbors: Ron & Sue Uihlein, Ken Dehn, Jennifer & Brad Murray, Kelly & Taine Talbot, Todd and Kathy Robinson, Brett Winter, Jacob Root, Shiloh Root, Fred Haeflein Terrance Robinson, Kathy Monrad, Larry Graves.

Babcock Re-opened the public hearing at 7:09 pm. He stated that the applicant is asking the Zoning Board of Appeals (ZBA) to make a determination and interpretation on whether a use variance application is needed and whether the code Officers decision to send it to the ZBA was warranted.

I. Review #TV4-20 for Use Variance Owner Jim Spelman, property located at 6600 Rice Rd 5&20 tax map # 54.00-1-16.121/IDA Spelman has an existing Use Variance approved for a Commercial use in an AR-2 district. A change in use is proposed for the property to be used by Nardozzi paving and Construction.

Public comments:

Ron & Sue Uihlein 6561 Rice Rd. Sue stated that they feel the proposed use for the property by the Nardozzi's does not fit the existing use variance and it needs to be reevaluated. They ask the Board to take serious consideration of the neighbors and their common vision of the neighborhood. They ask them too look back at the 1997 use variance that was allowed on 2 acres with office space, warehouse storage and the possibility of light woodworking. There was no light manufacturing, the motion approved eight employees not 40. Then in 1999 more acreage was added and it became over 7 acres. She stated there is now a giant building, and outdoor storage. She feels they are overstepping their variance. This changed the neighborhood. She stated we live in the county, noise travels. The number of employees from eight (8) to forty-eight (48) snowballed over time. She stated the ZBA has the chance to right any wrong doing or overreach by the Spelman Company. She again stated that Nardozzi paving and construction, LLC does not in any way fit into the narrow scope of the original variance and they would need a new one. She stated that Spelman's hardship is now created by his overstepping his variance. There was a commercial variance and now an industrial use is trying to fit into the commercial district. The neighbors have obtained legal counsel and they would respectfully ask the board for more time for their legal counsel to review the application before making their determination or their interpretation. Just as the curtesy was extended to Mr. Spelman and the Nardozzi's.

Brad & Jennifer Murray 6784 Rice Rd. Jennifer stated the proposed use does not fit in with the existing use variance. It should be reconsidered as a new variance, and as with any use variance it should be subject to all the requirements as well as the neighbors' concerns and the history of the property. There has been a slippery slope since the Spelman's had first been approved to what is currently there. She thinks it's important to review the history of the property even though the neighbors realize that the board cannot go back and overturn what the previous ZBA boards had put in place. The argument being made by Mr. Spelman and the Nardozzi's is that their business is the same, and she feels that is clearly not the case. The Nardozzi's are industrial. Their website is clearly industrial. Mr. Spelman is advertising with real estate companies as industrial, and their use needs to be considered as an industrial use. She feels that Mr. Spelman's business as it stands probably should have been industrial all along. There's off street parking, light manufacturing, a machine shop and all of the uses are industrial.

The neighbors along with their attorney are asking the Board to right the wrongs, make it clean going forward. They are not opposed to business in Bloomfield they just want it done the right way. She along with all of the neighbors respectfully ask the board for a continuation of the public hearing to allow time for their council to submit and research in the allotted time permitted to the Nardoizzi's and Mr. Spelman's attorneys.

Kathy and Todd Robinson 6608 Rice Rd. Kathy stated that the board needs to rethink the variance. They need to look at what is their now as well as the future. It has had a great impact on their land and on their topography. Also, an impact on their peace of mind, she said they stated they bought their property to enjoy it. Now that they are retired, they do not want any kind of industrial next to them. She respectfully requests along with her neighbors that the board gives their lawyer enough time to review the information that everyone has received so they can help the board make a determination. Todd wanted to talk about the character of the neighborhood. When they bought their house, they knew there was a business next door, they did light woodworking with eight (8) employees. He worked a lot and was not around but then he retired eight years ago. Since then, he's had the opportunity to see what's going on and watch the property change. He stated he had to dig a retention pond to access the back of his property from the water run off of Spelman's. He's assuming that is the time frame that the septic system was leeching on his land also. There is a strip that he cannot mow, Mr. Spelman's business was in full bloom at the time when there were forty to fifty (40-50). They dealt with car traffic and occasional deliveries but now he feels you want to change the whole characteristic of the neighborhood. He has worked construction all of his life and now they want to put a heavy equipment mechanics garage with a structure that there moving from another location on the property that is 60 x 60 and changing the configuration of that structure to go 80 x 160 to go around the new structure. That will be a construction/shop yard, that's where they will be repairing all of their equipment. They said that the heavy trucks will be inside when they have to lift them up, why do you need a great big area like that? He stated he's retired and he does not want to listen to that all day. He's worked in the yard before and their will be fifteen employees there, and reiterated that that is a big yard.

Fred Haeflein 2402 Brace Rd. He stated the Proposed use does not fit into the existing granted variance definition; it would need to be reevaluated against the requirements of a new use variance. With the comments from the neighbors they ask the board to review the comments of the essential character of the neighborhood. He stated that the use will change the character, the use of heavy equipment that a paving business has with trucks in trucks out will be an excessive amount of truck traffic no matter which way they go. Rice to Brace, Pond Rd., 444 it will heavily impact the traffic and the community. The equipment is not like farming equipment that they have a couple times a year. It is different than milling machines, lowboys, paving trucks, and triaxles. The truck traffic will be lot more extensive than what Spelman's had. Since the business closed, we have noticed less traffic. We would appreciate traffic study done and a true number of vehicles that will be coming in and out of the facility whether it be employees, heavy trucks and any type of delivery. He feels it needs to be looked at closer than what has been presented. He agrees with the neighbor's strong points and he along with his neighbors respectfully ask the board to continue the public hearing so their attorney has time to review the new information presented to the board so their legal council is given the same curtesy as was given to the Mr. Spelman and the Nardoizzi's.

Ken Dehn 2081 Brace Rd. Dehn stated that he lives across the field and across the road from SDC. When there are no crops he can see right across the field to the property. He thanked the board for listening to the neighbors' and stated that they all appreciate it. He stated he will hear the same things from him as his neighbors and he hopes the board can see the board sees this as a sign of solidarity. Each neighbor has put together an agenda to make sure it is clear to the entire board that they are very strong minded on this they've hired legal counsel. They believe it would be a mistake to allow this variance to go through. In partnership with his neighbors he asked that the board take seriously, their common vision regarding the essential character of the neighborhood. He wanted to ask a couple clarifying questions and posed them to Babcock the Chairman of the Board. He asked if the Spelman property is currently zoned industrial. Babcock answered no, it is zoned AR-2. He then asked if a company self-subscribed was industrial, and wanted to purchase that property what would they be required to do. Babcock stated that as a ZBA chairperson he was not going to put on a Code Enforcement Officer's hat. Dehn asked if the Code Officer could respond.

Kier stated that he would have to evaluate what a business was going to do in relation to the current zoning and make a determination. Dehn then went on to say as board members you are their voice, and also like them, members of the community. The job is difficult and this situation will not make it any easier.

We live in a rural community. Each of them chose to live in a rural setting, not a city or suburb. He then stated they pay hefty taxes, but they made that decision because they wanted to live in a rural setting away from urban sprawl and shopping malls, manufacturing and industrial. The granting of commercial zoning to an upstart business in a residential zone is always a sensitive issue. It happened, and in the case of SDC success lead to increased development and it went beyond what most of the neighborhood would have wanted. He then stated to his credit Mr. Spelman exceptionally maintained his property and the majority of the truck traffic of delivery of materials and shipping finished product was done in the evenings. Most of the neighbors believe his expansions eclipsed what was permitted by the variances but again this property and business management decisions generally kept him free from the scrutiny from the people in the neighborhood. He thinks that happened in large part because the property looks good, and he takes care of it. Businesses are there to make money and based on what has occurred for Mr. Spelman circumstances have arose that made it difficult for Mr. Spelman to become profitable. That is unfortunate but sometimes businesses fail. In over twenty (20) years a complex was built and it would be difficult to sell to a commercial business. He stated that apparently unable to find a buyer Mr. Spelman advertised his property on an industrial real estate site. He stated that is a shocking and disappointing revelation for him and his neighbors. He was willing to solicit industrial business and forsake his neighbors. He listed some sites the property was listed on. Loopnet.com, buzzfile.com, and finger lakes properties.com. He then stated that the following is taken directly from the Nardozzi website: Heavy highway civil construction and paving. Nardozzi paving and construction boast over thirty-five (35) years of success in upstate NY and Greater Rochester markets. This self-proclaimed industrial business as the website states, heavy highway civil construction paving says, *we specialize in municipal, commercial and industrial, residential and heavy highway site development and renovations ranging from access roads to access bridges, underground utilities and in-between. Nardozzi construction is one of the fastest growing construction firms in New York.* Mr. Spelman advertises on industrial real estate listing. And the Nardozzi's a self-proclaimed industrial company submits an offer. This is an industrial business they're trying to sneak in under commercial zoning. Your home is a sanctuary, our property values from industrial business will plummet and change the character of the neighborhood. The social and emotional character will be significantly damaged by the intrusion of an unwanted member of the neighborhood. He also agrees with his neighbors and asked for the public hearing to remain open so they can submit and give their newly obtained legal counsel time to review, as the curtesy was given to Mr. Spelman and the Nardozzi's.

Larry Graves. 2001 Brace Rd. He has the same concern as his neighbors. He stated that when a property turns into an industrial property there are environmental issues and concerns to deal with. He stated this property already has a problem with its leaching system. Especially since the place was designed to have eight employees and now, they have 40. He would say that it overloaded the system. Fish Creek is a trout stream which he believes is part of the Ontario water shed. Noise pollution goes along with a lot of industrial facilities. Trucks pulling in and out with bigger diesel engines. He believes it will change the character of their country life style when there are industrial parks available. Why would you allow something like this in a primarily farming and residential region? He respectfully asked the board for continuance, so they can do a little bit more investigation.

Taine Talbot 6684 Rice Rd. He stated this is the third meeting he's been too and he agrees with his neighbor's. He asks if he could give his allotted two-minute time limit to the newly obtained Attorney for the neighbors.

Brett Winter 6705 Rice Rd. He stated that from what he understands from the last meeting, the Nardozzi's and Spelman lawyers stated they would use the property for office space and storage of materials. Later it went on to say they would use it for outside storage, and an equipment repair facility. He stated that in the last meeting they said they will require large trucks. He stated that last week he was on vacation with his family and they went by multiple road jobs. They were doing milling and paving. Unlike when you have your driveway paved, the pavers are three times the size of that equipment, these types of equipment are extremely large, heavy and wide and are oversized. He then asked will these trucks need an overweight permit? And with that, will they need lead and follow vehicles with flashing lights? He wanted to know if the roads needed to be rated for this and which roads. He thinks they need a little more specifics, he stated with the size of the building it's not just an office space.

He stated they need more specs on the size of the equipment, the routes in and out, the hours of operation, from what time to what time. What type of outside storage facility will be there? Will it be stone, or asphalt, and will they put in oil separators in the building?

Terence Robinson, Attorney for the neighbors. He's is on the Zoning Board of Appeals for the town of Canandaigua and is the Chair. He understands this is challenging application. He just came on to this case, and he had an introductory meeting with the community residents in attendance to discuss his potential engagement and they have been finalizing this over the last 24 hrs. He would like the opportunity to submit a full submission so he's asking for more time. He stated that originally it was filed as a use variance, and then changed to a zoning interpretation. He has not seen a public notice changing that, but assuming it was. We are here now on a zoning interpretation. He thinks its important to remember that the original use variance in 1997 was not an overly broad use variance, as it has been presented. But rather it was quite narrow and limited. He has read the minutes; he has not seen a decision sheet with specific findings of fact which are required for a use variance. He has only seen the minutes. What the minutes show is that a motion was made to approve a commercial business on 2 acres. Specific facts that were presented for that was that it would be a small business with eight employees. It would only include warehouse and office space. When the discussion of light woodworking came up it was stated that maybe sometime in the future. It was a speculative use, not an approved use. It was specifically stated that there would be no light manufacturing. It was stated that it would be for a home operation. The Code Enforcement Officer at the time Mr. Woodruff states in the minutes that if the business remains similar to a home operation there would not be a problem, if more equipment were added then another variance would be required. Robinson stated that never happened, with the history of the property and the use variance are somewhat troubled. There was no decision sheet at the time, no findings of fact, an no specific evidence as required by NY town Law about specific financials, nor a backup argument of not getting a reasonable return for any of the permitted uses in the zoning district. It was never discussed. It was a mere statement that Mr. Spelman could not find anything else available, and everything else was too expensive. Then you get to 1999 it was presented as an expansion to a use variance. He stated it was not an expansion of the use variance, it was an area variance merely to add additional acreage to the parcel. It was not to expand the use. He stated the same thing occurred in 2002, one again not an expansion of the use variance. It was another area variance to add additional acreage. Robinson stated that what the board is left with is one single approved use variance from 1997. It was not broad, it was narrow and limited, and only for a Commercial use for warehousing and office space. With the facts presented it would be for a small home operation for eight employees. Over time that property morphed into something that was not approved. It began to have light industrial uses, and in 1997 it was specifically said that that would not happen. Now the proposed use seems to go beyond that to allow the storage and repair of heavy equipment and that use is only allowed in the General Industrial District. Robinson stated that we see that this property has morphed and is now seeking a far more intensive use. Robinson on behalf of the neighbors respectfully request that the Board makes a determination that this applicant has to file for new use variance. There is no way with what you have in the record, that this can be considered a continuation of the existing use variance. He stated the applicant is asking to go from a commercial use of a small business with eight employees with only warehousing storage to a much larger general industrial use when there has been no expansion on the original use variance. Only two area variances. Finally, he wants to mention that the neighbors the Board has been listening to tonight, are the ones that really matter as the Attorneys get paid to come and do a job. The neighbors live in the community, they have to deal with the impact on their neighborhood. He believes that you have heard ample evidence tonight and at prior meetings that this expansion of use has already impacted the character of the neighborhood and this further much more intensive expansion of use will really have a permanent impact on the neighborhood that is unlikely to ever be repaired.

Jeremy Shur, Attorney for the Nardozzi's. He has heard a lot of things said and he respects what the public has to say, and what Mr. Robinson had to say. He would like to reiterate something the Mr. Refermat said at the last hearing. We have a record and when we start introducing facts that don't have any basis in the record like references to paving that would be done out of the Spelman site or milling work that will be done out of the site. There simply talking about issues that the Board can't consider because they are not supported by the record. There will not be paving or milling work done out of the site. When you hear the scary references to businesses growing, it is not supported by the record. It's just not true. The Nardozzi use would reduce the number of employees on the site. From approximately forty (40) to approximately ten (10).

The site would be used primary for office use. He stated what was more pivotal to his argument on a legal basis is this notion that members of the public feel that this board should right the wrongs of the past. He stated that Mr. Robinson cast aspersions on the past ZBA use variance. These variances were issued about eighteen (18) to twenty-five years ago. The statute of limitations to challenge the issuance of a variance in court is 30 days. He stated while the Board should consider the public interests, they need to also consider Mr. Spelman interests. And the property owners' interest. The property owner is entitled to rely on variances that have been in effect for eighteen (18) to twenty-three (23) years. He then stated Mr. Robinsons characterizing of those use variances is simply wrong. There were three use variances, some of them also expanded the area of the use but all of them responded to Mr. Spelman expanding the use of his property. That is why we submitted the use variances for the Boards consideration. Because each of them clearly shows an expansion of the use, up to the 2002 variance which talks about a business than can run trucks in and out of the property 24 hours a day, 7 days a week. At least by 2002 this was not a home operation. That brings the Board to one (1) question, because they can't go back and rewrite what the ZBA did eighteen (18) years ago. That would be unjust to the property owner and it would be unlawful. The question that needs to be asked and answered is, does the evidence in the record show that the Nardozzi's planned use deviates from the existing permitted use. The Nardozzi's would reduce the number of employees, they would store no asphalt on the property and do no milling or paving out of the property. Their Construction work industrial or not would not be performed at the site. He stated that is an important consideration due to what we keep hearing from the public, which is the Nardozzi's do industrial work. The question is not what do the Nardozzi's do in general, the question is what do they do at the site. The record shows they will not do industrial work at the site. He thanked the Board for their time.

Mr. Refermat, Attorney for Mr. Spelman. He stated that they are asking for an interpretation, and that interpretation should be that clearly from the record that the Nardozzi's use is the same or less than, its no more than, the Spelman business. Spelman Development has not been operating for about a year now. What they stated the first time is in the event, because they do not presume anything and respect the authority of the board. He respectfully submits, it should not, but if and its possible, that the board decides that a new use variance is required. Even though the record does not support it. They submitted very detailed information both law and fact in the record to show that Spelman would qualify for new use variance. Although he does not feel its needed. He thinks that everyone at the meeting needs to be clear on the nature of why the Board is reviewing this tonight. It's not just the interpretation, although they believe the inquiry ends there. In the alternative if the Board deems it necessary then we do ask for it to be an application for a use variance. He also wants to say there was a comment made from the public about this Board being their voice, he respectfully stated that the Board is not the voice of any individual citizens. They are volunteers on a Board that is charged with interpreting the codes of the Town of East Bloomfield and applying the laws to the facts that are in the record. Mr. Spelman is a quarter century resident and business owner in East Bloomfield and he's staying in East Bloomfield. He stated that when Mr. Spelman contacted him, he knew that there was a public hearing two (2) weeks prior, but he signed up to help him and he moved things around to do so. No curtesy's were given and none were requested. He realizes more time would have been helpful but he did the best he could to get his submittals in on time. The point is they got the information in on time for the last meeting. He addressed the Board and stated that they are here to finish the public hearing to deliberate and to vote. Mr. Spelman is bleeding. The fact that the hearing was continued makes it worse. He stated it would be respectfully, totally improper to continue this so a new attorney, who has just spoken, can have enough time to do whatever he thinks he's going to do. That would not be proper, the Board respectfully needs to close the public hearing, deliberate and vote tonight. He stated that there were many references to some curtesy allowed to himself, but there was no curtesy. He did not ask for it and he respected the Board and the Boards meeting schedule. They were in front of the Board two (2) weeks ago and they are here tonight. He then stated that he can not speak for the Nardozzi's, but the home use will continue. Mr. Nardozzi plans on living in the house that is on the property they would be purchasing. They are personally invested in this. Finally, the information is all in the record. The fact of the matter is, as he mentioned over the past quarter century it was striking how few complaints there were about Mr. Spelman. Even tonight, to his credit they acknowledged the very good use that Spelman made to the property. The record reflects that the Nardozzi's are going to do the same thing and even less intensively. This concept comes from people's rights under the constitution is that a concept of vested rights. That usually applies when you have a use and the law changes, sort of a grandfather concept. But he respectfully submits as he did last time that it's a very similar thing going on here. They have laid out the case, there are variances, and a use in place for over twenty (20) years.

The record clearly shows that the Nardozzi's are going to be within that use, He thanked the board for their time and stated that a continuation would be really improper and completely prejudicial and even more damaging to his client. He asked the Board to close the public hearing tonight when it's time to deliberate and vote. He then stated he did have a couple items to add to the record, he gave them to Rayburn.

Babcock stated that to a fault they give the public their opportunity to speak, so no one feels like they were not heard properly. This is a public hearing, and tonight they are giving the public the opportunity to speak, they are limited and they are getting close to closing the public hearing so they can deliberate. He asked for any last statements. Larry graves asked about the radius of notification. Babcock stated that it was briefly addressed at the last meeting and those minutes are not readily available to the public at this time. The code requires a two hundred (200) foot radii, along with a property under review sign and the public hearing is posted in the local newspaper as well as on the Town website. Babcock stated it does seem to be limited, but the only recourse you have for that is to petition the Town Board. Graves stated he lives across the street from Spelman's property. Babcock stated that this parcel that is in question is the parcel where just the buildings are, it's not all of Mr. Spellman's holdings. He owns many acres next door fronting on Rice Rd and on Brace Rd. So, if you were not within the two-hundred-foot boundary of the property under review, which is approximately seven acres you would not have been notified.

Murray wanted to comment on a comment that Mr. Refermat made that they were building somewhat of a case for a new use variance if the interpretation was that the Nardozzi's use did not fall under the existing use variance. She stated that it was mostly inadequate, as she was only just able to get it to their attorney because she was only able to get a copy of it late last week but on the grounds of reasonable return there is still a lot that needs to be done there. Also, on the essential characteristics. For the record she knows that it was submitted, but it definitely needs to be re-examined.

Mr. Robinson agrees, and would like to respond to a comment made by Mr. Shur. He wants it on the record that he does not misrepresent facts. In regards to the 1999 and 2002 variances, he wanted to read from the minutes. Motion that was made by Mr. Overmoyer states: *shall the applicant be granted an area variance allowing for an addition of 1.492 acres*, he then stated it was an area variance not a use variance. Then in 2002, as he stated once again, *application made by James Spelman for the expansion of commercial area*, the motion made by Mr. Norman was for the *expansion for the driveway 100 feet to the east and 225 feet to the north*. He wanted to be clear on the record that he did not misrepresent those facts.

Babcock asked for any final comments from the public. He then asked the board if they had any questions that they wanted to follow up with the public with. Babcock stated that the Board needs to close the public hearing and take up the deliberation of the interpretation of the Nardozzi's proposed use, and decide if it fits in with the existing use variance. In the event that there would be a new use variance required, the public hearing would be reopened at that time. **Babcock made a motion to close the public hearing to deliberate. Thorn second the motion, all in favor? all Board members present voted aye.**

Deliberation: Babcock stated he thinks its relevant that they look at the record of the history of the parcel. They are tasked with answering two questions, was the Code Enforcement Officer's decision to send a new use variance to the board correct? And does the Nardozzi's proposed use fit under the existing use variance, therefore a new use variance was not required. Mr. Nardozzi in the process of reviewing the record and in previous minutes expressed that he wants to purchase the property and relocate his business there. A portion of that business that may or may not be allowed and that is what they need to determine. They need to look at the existing record and see if that use was permitted under the existing record of the history of the parcel/use variance.

Babcock stated that he would ask Mr. Nardozzi or his representative to give a summary of the proposed use for the property. James Nardozzi will speak for himself and his brother Michael. He stated they are in the public works and the work that they do is big, that is accurate, however he can tell you for a fact the work will not take place at the property, that is a fact. The primary use will be for employees of a professional nature, such as senior accounting manager, business manager, CFO, engineers, and a survey man. Those individuals will primarily be using the space. There is a warehouse and they intend to use the warehouse.

There is a shop there, they intend to use the shop. They will have trucks there; workers will be coming to get their paychecks. It's very similar to what Mr. Spelman had there. However, the scale of work that they do will categorically not take place on the property. He stated that their trucks travel on the thruway, and you have probably seen them. The work that they do takes place on a physical site, the trucks are at the site where the work is being done. He stated that there was a statement made that Mr. Spelman's property was used for light manufacturing, woodworking and that there were variances, he can't comment on that. He can only comment on what they do. He stated that they will not be doing manufacturing, and they will not be running trucks 24 hrs. a day seven days a week. Hours of operation for his staff will be 7 am to 5 pm Monday through Friday, it is a typical workday. The potential for emergency work could take place. On vital utilities that we all rely on. It could be a Fire department, EMS, or a local municipality. He stated that he is sure no one in the room would argue that they wouldn't want their gas main or water main fixed. And in one of those events, that's when they would be occupying that site outside of those hours. He stated that in terms of equipment storage, ninety-five (95) % of their equipment is big and it stays on-site where its being worked. As that is where the work takes place. He stated that on occasion that equipment could come back and get repaired. We all in this room heard a statement that said the equipment is significantly larger than most farm equipment. The Jacobson wagons and the combines you all see are actually the size of his largest piece of equipment. The reality is some of that equipment has not come back to the shop for repairs in years. We have service trucks; a lot of the equipment is serviced onsite because it is so big. While he understands the fears of all those things, the reality of it is this property is positioned around truck routes. That's a fact. They intend to use the property on a professional basis. Professionals will occupy the space M-F. We will have board meetings and bid meetings. He then asked the Board if they had any specific questions on what they do? He has heard a lot of mischaracterization of the use of the site and what they will actually do at the Rice Rd. office.

Mr. Robinson asked if he could have a point of order, and asked if the public hearing was closed? Babcock stated that he was not recognized. Mr. Robinson stated that the Board was taking public testimony, and he stated if they would reopen the public hearing as he would like to respond to the comments by Mr. Nardozzi. Bryson stated that if the Board wants to ask questions of either applicant or any of the attorneys, that should be with the public hearing open so that its part of the record. Then when they are all done with that, they would want to close the public hearing. Bryson stated respectfully he would agree, with council's agreement to re-open the public hearing. If the Zoning Board has questions of any of the applicants, or the Nardozzi's or Mr. Spelman they should ask them. Relative to the application that is front of them. Babcock then asked if the public hearing needs to be open to ask a question? Bryson stated it does so that it is part of the record. **Torpey made a motion to re-open the public hearing and Garlapow seconded the motion, all in favor, all Board members present voted aye.**

Mr. Refermat stated that he agrees with Mr. Bryson but his understanding is that the public hearing is being re-opened for a limited purpose of the Board asking questions of people. The Board asked a question of Mr. Nardozzi about his business, and he does not think that Mr. Robinson is going to get up and start telling Mr. Nardozzi what his business does. Mr. Nardozzi answered the question. If there are questions to Mr. Robinson certainly that would be fine, but it seems to him that this is not the reason to reopen the public hearing to allow Mr. Robinson to dispute what Mr. Nardozzi stated about his business and try to get another bite into the apple to try and get facts into the record that are not there. Bryson stated that it's still part of an open public hearing if the Board has questions of the applicant, Mr. Nardozzi or one of the councils.

Babcock stated that at the current time the public hearing is open and he wanted to make sure that the Board is familiar with what Mr. Nardozzi business use entails, and that might be in our record, a very extensive record for the last two months of meetings and submittals. Bryson then asked if there was any objection to Mr. Nardozzi's comments that he made when the public hearing was closed as being part of the record now? Refermat stated he has no objections. Robinson stated only to the extent if we are allowed to respond. Bryson asked who's was allowed to respond. Robinson stated the public, as information was presented. Refermat stated it was in response to a question, he does not feel it was new information as that information is in the record.

Winter stated he would like to ask a question about what Mr. Nardozzi said. Babcock stated he was not recognized at the moment. Babcock wanted to get the situation figured out. Bryson asked if the Board have any

other questions that they would like to ask the applicant or any member of the public. Babcock stated they would entertain a motion to close the public hearing again. Mr. Robinson stated he requested to respond. Bryson told Mr. Robinson he could respond. Robinson's responded with: what you just heard may be part of the issue. There may be some overlap in the approved use. The original variance was warehouse and office space, they may have some office space, but what you just heard was you're going to have heavy equipment storage and repair which is not permitted in the Commercial District. And its only permitted in the General Industrial District. It's was never approved in the original 1997 use variance.

Babcock made a motion and Crocker seconded the motion to reclose the public hearing, all in favor, all board members in attendance vote aye.

Garlapow wanted to ask Babcock a question.

she stated she was new to this, and she wanted to know what the basis was that the Board is permitted to hear an interpretation of this nature. She asked if it was chapter 135 – 13 a (3) or is it Town Law? Babcock stated that he believes its 276 B of Town Law, and he will defer to the Town Attorney for the answer. She stated that she she's 135 – 13 a (3) where it states that: The Board of Appeals shall hear and decide on interpretive matters where the provisions of this chapter, including the determination of exact district boundaries, are not clear. So, she asked if what they were saying is that the definition of commercial is unclear, and that's what gives us the right to make this interpretation? She is asking what section of the chapter is not clear that warrants the interpretation.

Babcock stated it's an interpretation of the code enforcement official charged with the code enforcement of such ordinance. Garlapow stated that is the NYS Town Law. Babcock agreed, it also falls under the Boards charge and powers of review. She then asked what is the Board reviewing exactly. Bryson stated that when Mr. Kier made the determination that a new use variance was required, that was tantamount to saying the existing variances would not cover the Nardozzi's proposed use. So now the applicant is seeking an interpretation, as they feel it was an incorrect interpretation.

Babcock mentioned it is stated in the previous minutes, when the Board was trying to find out specifically what they were reviewing, and why they were there and what the use variance was for. The 6/24/2020 meeting minutes stated the Nardozzi's will still use the warehouse space for storage of materials and equipment, and utilize the office space. The only thing different is that they will have more outdoor storage of equipment in the rear than what may have been there before. They will utilize the warehouse and office space just as SDC did, however they will not have the light woodworking shop. They do municipal construction and may get an occasional off hours call. Babcock then stated the point is that this is a construction company that wants to have outdoor storage. He again read from those minutes that Kier stated the use of the property is similar in nature although the scope of their work is very different. The outdoor storage of equipment is different than the current use. Babcock stated that from those minutes it states that Nardozzi's is a construction company that has construction equipment, and they want outdoor storage of that equipment. He stated that most of the equipment is said to be on their job sites.

Thorn stated that the Nardozzi's are also asking for repair and maintenance of their equipment. Thorn stated that this is the biggest difference between the businesses, and those purposes are not included in the commercial district. He stated if you look at the limited industrial it also doesn't say anything about repair of construction equipment, and you can't store things overnight. Storage and repair fall under the General Industrial District. Babcock then stated as part of the 6/24/2020 meeting the board came to a consensus that Mr. Nardozzi's business would fall under the General Industrial District if he was relocating here. Due to the construction storage and repair whether indoor or outdoor. Garlapow stated that is under the permitted principal use in the General Industrial District, and she does not feel they are primarily in the business of repairing and storing construction equipment. The Nardozzi's storage of and working on their own equipment would be an ancillary use and not their primary use for the parcel. She doesn't feel that the Nardozzi's primary use falls under the General Industrial District, which is office space and use of the warehouse.

Torpey stated they are not talking about the primary use of the business, but the primary use of the property. What they have stated for the use of the property is storage and repair of heavy construction equipment and office space.

She also wanted to point out that in a letter that the Nardozzi's submitted, they intend to use the property to store equipment, materials and vehicles that performs the vast majority of its work by the building of roads, bridges and public utilities at its job sites. They would likely perform less manufacturing work at the property than the current owners. She stated that is in contrast to what Mr. Nardozzi stated tonight that there would be no manufacturing. It sounds like they are leaving the door open to manufacturing because there is a shop already on the property. Further down in the letter they say that the existing variances for the property allow around the clock storage and the loading and unloading of vehicles for general contracting work. The letter also states that the Nardozzi's also intend to utilize the property primarily for loading and unloading purposes with most travel to and from the property ending at five (5) pm and there are no significant uses between than the Nardozzi's intended use and the properties approved use that would require another variance. She stated that one of the issues that they have is that the approved use is not the current use is or what it was a year ago before Spelman's business closed.

Babcock stated they can take that proposed use and compare to the record which starts in 1997 with a use variance. The Board can go through the original variance and examine it, then deliberate on it. Torpey stated she feels this is an operation that has morphed overtime without appropriate or known supervision. She stated they have heard from a number of people that Mr. Spelman is a very conscientious member of the community and he has kept his property in excellent condition. Most of what has gone on at the property appears to have gone on within the building as prescribed, but it does mean that the light manufacturing that occurred was never officially approved. There were questions in the record that specifically asked, what would be occurring in the building. Thorn stated they were asked about light manufacturing, and they stated they were not looking for that type of operation. Torpey stated that in the 2001 Planning Board meeting Turnbull made a motion whereas: *the building was used for storage only and not to be used as working shop*. She then stated in the 2002 minutes Use/Area Zoning meeting, for the driveway expansion. Spelman stated the office hours would be from 8 am to 4:30 pm. With builders coming and going if emergencies should arise. Norman asked what machinery would be used, Spelman stated he had a dump truck and a tractor. So, she thinks it's a leap to go from the descriptions that they have in the record to round the clock storage and the loading and unloading of vehicles for general contracting work. There was never light manufacturing approved for this property, there was never around-the-clock operation approved nor the coming and going of construction vehicles. These are the facts that leap out to her.

Babcock, stated that before the Board starts jumping around to different variances, he wanted to read the motion for the 1997 variance that was granted. *Marcellus made a motion whereas the Spelman's have researched the best location for their business and homes, and whereas this is unique to the neighborhood and whereas the design of the building will be in keeping of the others around it and whereas the planning Board has also made a recommendation to approve the use variance and whereas seqr is a negative declaration the Zoning Board of Appeals will pass a resolution for the Spelman's to have a Commercial Business on two (2) of the forty one (41) acres they are proposing to purchase from Ruth Ilardi on the corner of Brace and Rice Rd in the Town of East Bloomfield.*

Babcock then went on to say the motion from 1997 states a commercial business on 2 acres. it does not say general industrial or light industrial and it does not say light manufacturing. The terminology used was for the Spelman's to have a commercial business. Looking back at the minutes and what was said we can have a better understanding of what their basis was for that motion. Babcock then paraphrased from the 1997 ZBA minutes stating: *Woodruff advised the Board the Spelman's have a purchase offer in on 41 acres of land on the corner of Brace and Rice Rd in the Town of East Bloomfield, they would like to subsided two (2) acres of land from the parcel to have their business in a barn like structure. The building would provide office and warehouse space for them. Because a commercial use is not allowed int eh AR-2 district, a variance is necessary. The majority of Spelman's business would be conducted off premises, the building would look like a barn, they would have a warehouse downstairs and office space upstairs. The building would be understated as their homes would eventually share the parcel.* Babcock then noted that the home was built on the property next door. The proposed building was 60 x 40. *Marcellus questioned the warehouse use, Spelman stated possibly some light woodworking down the road.* Babcock stated it does not say general industrial or light manufacturing. *Marcellus raised a concern about noise, Spelman stated the primary function would be warehouse office space. Rimlinger, asked about light manufacturing. Spelman replied they were not looking for that type of operation.*

It stated *they would have two (2) vehicles working out of the building with a possible expansion to five (5). Most employees take their vehicles to the job site. There are eight (8) employees at the present and are considered a small contracting business.* Babcock went on to say Stone from the public in 1997 asked in which direction would the future expansion take place that is on the site plan map, Babcock then stated it's not an expansion of the use, it would be an expansion of the building and to make sure the setbacks would be in compliance. The meeting notes also state *an addition to the back building would not impact the septic. The building would have a small office staff, not all of the employees would be in the building. They were asked about deliveries, Spelman answered once a week with occasional deliveries. Sue Uhlien, from the public in 1997 expressed concern about light manufacturing. Woodruff stated if the business remains similar to a home operation there would not be a problem. If more equipment were then added another variance would be required. As Code Officer he is required to check on variances yearly. Woodruff stated Sporn and Mark Johnson from the public in 1997 were concerned about the increase in traffic. Spelman said their business would provide a low volume of traffic to the area. When asked if there were other areas that they considered Woodruff stated the industrial areas were cost prohibitive. and they would not be able to include their homes on the property.*

Babcock reminded the Board that they were not here to determine whether or not the Zoning Board in 1997 applied the proper use test consideration or not. Their job is to look at what they did allow, what the motions were that were granted, and what the basis of the motions entailed in what they reviewed to get to that motion.

Babcock continued to paraphrase from the 1997 minutes and read that *Marcellus stated due to some of the comments being raised Marcellus read from section 902 from the Zoning Code regarding allowable uses in an AR-2 district. He made the comment that based on some of the uses the Spelman's operation seem to create a minimal demand on the area. One of the things allowed in the area is a small home business with two (2) employees.* Babcock stated that it was talked about, he did not necessarily say this was that. Some things stated are somewhat nebulous, but they mentioned them. *Rimlinger stated he has no problems with the variance request and if expansion happens in the future the Spelman's will need to reapply to the Board at that time. He added they have done a good job in looking for the placement of their business and homes, and this should be good for them and the Town.* Then the motion was made.

Babcock asked the Board if anyone wanted to discuss anything they heard. Garlapow stated it is her understanding that they did not carry through any conditions into their motion. They were not in the whereas clauses, nor the final letter that was sent by the ZBA. It just confirmed that they had been awarded a commercial business use variance and it did not list any conditions. Babcock stated that was correct. Thorn stated part of what they are supposed to do and what they have been discussing is an interpretation of what their intent was. Thorn stated, even though they have been told differently, there is only one (1) use variance on the property. He stated the others came across as area variances. He stated no one used the other variances to expand the use. He stated you cannot expand the uses with an area variance. Torpey asked if it was a use variance because they were adding dimension to the acreage that was designated under the commercial use? Torpey stated that when she thinks of an area variance it's a structural area variance remaining within the use of the property. In this case it seems like they are adding acreage, so that acreage is now included under the umbrella of the commercial use. It didn't change the original use, but it was still a use variance because now your appropriating that additional property under that use. Bryson started respectfully, that's some of what you are charged with as the Zoning Board in terms of what was stated. Garlapow stated to Thorn's point, part of the interpretation is whether the Nardozzi's want to do falls under commercial use under the code as it is now. In addition to what the intent was back in 1997. She feels a relevant question is, they have a commercial use variance that runs with the land, so is what Nardozzi wants to do fall within the confines of what's permitted under the commercial district now. She feels that is what their interpretation should be on, not whether they said this or that in those minutes as they were never drawn in as conditions on the use variance. Torpey stated that code does prescribe what is allowable in the commercial zone. Garlapow then reiterated that's what she thinks the Board should be interpreting.

Babcock stated that is why he said the only place in the code that allows construction storage and repair is the General Industrial District per our code. Garlapow stated that there are provisions in the Commercial District under permitted accessory use. C. Permitted accessory uses and structures. (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. Thorn stated there is no mention of repair or outside storage. Torpey stated as an interpretive body they are supposed to look at the intent of the use applied for and commercial is largely retail. Repair and storage of construction equipment does not fall under retail. Garlapow states she sees that an ancillary to their primary use. The majority of the people that are working there on a day to day basis are engineers, accountants, etc. the people running the business. Its ancillary that their coming in to fix the machinery outback from time to time. It's not a construction equipment repair business. That's what she feels the general industrial codes primary use is meant to be, a construction repair business of other people's equipment. Thorn stated it is a change of use that is not permitted in this district. He then stated whether you want to call it general industrial or not, it is a change of use, that would have brought the variance to this Board. Garlapow states she views it as a commercial use, there are numerous references of grouping of commercial uses, general commercial use C.12, and under Special permitted uses it allows for commercial storage building. Again, she stated they are not making money on the repair of their own equipment, and she feels it is ancillary to their primary use. Thorn stated that it is a change in use of the property. Garlapow stated it was granted as a commercial use variance and their proposed use is a commercial use, and its less impactive in many ways than what was going on there before. There was manufacturing there and there won't be now, also there will be less employees. Torpey stated she feels that is largely a subjective assumption. She stated as she read earlier in the note from the Nardozzi's he indicated there would likely perform less manufacturing. That leaves the door open to manufacturing because there is a manufacturing shop on that property. Then she stated there was a lot of language within that letter that was qualitative that seems to offer a lot of wiggle room for what they would actually do with the property. Garlapow stated she agrees that certainly light industrial should not take place there and going forward it should not take place there. That would be up to Code Enforcement. Torpey also stated that she mentioned the round the clock loading and unloading of vehicles for general contracting work, that's also not allowed under the current use variance, but that is something that Nardozzi does intend to use the property for.

Babcock stated he would like to move forward for the moment to the 1999 variance. He would like to read the motion, *Overmoyer made a motion where this is an extension of an already existing commercial variance, whereas the issue of buffering will be addressed by creating a year-round barrier to headlights, noise, dust, and all other nuisances created by additional traffic to the back Spelman parcel. The buffer will be high enough to prevent transmissions of elements described above. The Zoning Board of Appeals shall grant the area variance allowing for an additional 1.492 acres to be transferred from the Spelman AR-2 parcel to extend to the rear lot line of the commercial parcel by 200 feet.* Babcock then stated they are saying this is an extension to an already existing commercial variance. Babcock asked if the Board felt they needed to interpret exactly what he meant by that. He repeated, extension of an existing commercial variance. Babcock stated that he thinks he's acknowledging that there is a commercial variance in place already, and he defines later as being an extension of 1.492 acres for an area variance.

Babcock paraphrased the minutes from 1999, *Woodruff stated the Spelman's received a use variance two (2) years ago for two (2) acres of their land for commercial use. They would like to add another 1.492 acres to that parcel to accommodate additional buildings needed for storage of their trucks and equipment. They own the surrounding forty acres.* Garlapow stated that this was granted in part of storage of trucks and equipment. Babcock agreed, and Torpey stated inside a building. Again, reading from the minutes *Chandler stated the new building would have the same agricultural look at the original building to keep the rural appearance of the neighborhood. He said the Spelman's would like to get all building materials and equipment under cover to tidy the appearance of the property. The additional lands are required to meet setback requirements for the additional building. Rimlinger asked if they would be adding more employees, Chandler stated not at the present time.*

Babcock advised the Board that Dave Chandler was representing the Spelman's for this area variance. *Chandler then stated in the minutes that he feels the new building is necessary for storage and will not increase any traffic to the parcel. Stone who was a member of the public stated that he wished to register a complaint, he was in opposition to the additional land being added for an increase in business size, he was opposed to the original variance being granted, and went on to say the Spelman operation is not an 8 am to 5 pm operation. There are trucks n traffic in and out very late at night and early in the morning. He said the new building would be in front of his property and trucks going to and from the property would have headlights shining in his bedroom window. He asked for additional time to obtain a lawyer, and added that some of the spray from the products they use in their instillation of goods at other job sites was done outdoors in an area that was close to his well. Rimlinger asked if Woodruff had any comment, Woodruff replied, no this is the first time he had been made aware of Stones complaint. Overmoyer and Rimlinger both stated they were aware of outside spraying being done. Rimlinger stated that the Board was advised originally that there would be little traffic and activity, but were advised that some of their activities would be after business hours allowing for them to load up and travel to other job sites. Chandler stated that it's his understanding that the finishing will be in the addition the Spelman's are building at the present time, the new building will be to house materials and equipment. He also commented that the Spelman's wish to be good neighbors and no knowledge of the type of operation Stone is describing. Stone also stated he tries to keep his property presentable and he would appreciate the Spelman's getting their materials and equipment undercover. Stone reminded the Board his complaint is with traffic, the placement of the new building and the manufacturing and finishing of materials so near his property. His well is two hundred and fifty (250) ft from his property where he has seen them spraying paint on five-gallon pails outdoors. At that point woodruff reviewed the minutes from 8/27/97 and the Spelman's had indicated some woodworking would be done in their shop. Overmoyer asked how much paint is involved, Chandler replied he did not believe very much. He stated they are building a spray booth for the new addition to the existing building. Rimlinger commented this would eliminate the outside spray. Woodruff stated he does not feel manufacturing is the correct term for the activity in the Spelman's woodworking shop. He also mentioned not hearing of a traffic issue until that night. Woodruff reminded the Board they are dealing with an area variance for an expansion of 200 ft to the rear property line. Overmoyer asked if the town has a definition of manufacturing, Woodruff replied its vague. The original variance granted for the Spelman's was a commercial variance with light manufacturing to be completed.*

Babcock stated that it does not say anywhere in the 1997 minutes use variance that light manufacturing is to be completed. Torpey stated no, and it's in direct conflict a few minutes earlier in the notes that he does not feel that manufacturing is the correct term. She would like to point out that further up in those meeting minutes that Rimlinger said they were advised upon the original application that some of their activities would be after hours allowing for them to load up and travel to other job sites, and Woodruff chimed in that off hours activities were discussed in the first variance. That is also not in the record, therefore they are incorrect statements.

Babcock noted that Rimlinger made on motion on *SEQR* stating it was a *neg dec* based on 1. This being an extension to a commercial use already granted. 2. The applicant will deal with the issues of buffering to resolve the neighbor's concern.

Babcock asked the Board if they thought this was any kind of additional use granted in this variance. Garlapow stated that under the motion it stated it was an extension of an already existing commercial variance. The motion does not explain what that is, it just says it's an extension. Babcock stated that there were some things that were discussed in the minutes, but again it was an area variance hearing. There was discussion of to what was going on at the property at the time. But there is no specific language that phrased any of it, Thorn stated he does not really believe you can grant a new use with an area variance and he does see where they specifically said that. Babcock asked for any more discussion of the 1999 minutes and stated that he thinks they all agree it was an area variance.

Garlapow stated that it does say explicitly that it is an extension of an already commercial variance. She then stated that means it is making an already existing variance bigger, but it does not say explicitly what that is.

Babcock stated the only thing in their motion was to expand the area specifically, he then asked if the Board agreed on that. Crocker agrees, Thorn agrees, Torpey stated that the acreage is specified 1.492 acres. Garlapow stated that yes, it was for the use of storing of trucks and equipment. Babcock stated that he does not feel they left anything open ended, and asked if they are in agreement with that, and that what they extended and what they changed was the area? Garlapow replied but implicit in that was additional uses that they wanted to take place there.

Babcock asked her if it was in the motion, she stated implicit in the whereas clause, there were additional things that they wanted to go on there so she does feel it expanded the commercial use. Babcock asked her to elaborate on what points she sees that. She stated the extension of an already existing commercial variance means that they are expanding the uses that are going to take place there. The reason is to build this building to accommodate storing of trucks and equipment. Babcock asked if she thinks that changed the use, she stated she thinks it expanded it. Babcock reminded her that Woodruff himself reminded the Board at the time that this was an area variance for an expansion of two hundred (200) feet to the rear property line. Garlapow stated but it's to build a building that they want to use for expanded commercial purposes. Torpey asked what's the expansion of commercial purposes? they already had storage of trucks and equipment. And then she stated this is not external storage and repair. Babcock stated that just because you add more storage it does not change your use, Garlapow stated that it changes the scope of it. Garlapow stated that when you build a building to have more stuff your business is growing. That's what got approved here, whether right or wrong.

Babcock restated that there would be no increase of employees at that time, all they did was approve more area. They asked for more area to build the building and that is what they gave them in the motion. The extension was that they were granting an area variance allowing for an additional 1.492 acres. They needed more area. Garlapow stated she feels they were implicit in the original variance. Now it covers this and that's what got approved. Thorn stated that he's not sure they cared about whether it was two (2) vehicles or Ten (10) they have the right in the commercial district to store their trucks and equipment inside their buildings. Garlapow feels the scope is highly relevant here. Torpey stated that she thinks what Garlapow is saying is that there is an implied mention of the type of use, and she does not feel that is the case. Garlapow stated it was not the type of use but the scope of use. She stated that she feels that they gave the variance due to the business expanding, Torpey asked expanding how? She also reminded her that it stated there would be no increase in traffic expected. They are adding a building to store a couple more vehicles, without an increase in traffic. There's no light manufacturing mentioned, there's no other additional industrial aspect mentioned. This is not a fundamental change of use. This is an area variance. Garlapow yes, but it's to accommodate expanded space that they need, and that is what happened here. They took the existing use variance and they extended it.

Babcock stated that he can hopefully put this to rest, and they can come back and look at it again. He stated that it was an expansion of the already existing commercial use in place by the addition of an area variance. Garlapow stated she can agree with that.

Babcock then went onto 2002 minutes and motion, *Norman made a motion to grant variance approval for a driveway and for future expansion, 100 feet to the East and 225 feet to the North.* Babcock stated that this is the last variance that was granted for this property. He then went through and paraphrased the minutes. *Woodruff explained to the Board that Spelman would like to expand his commercial property on Rice Rd. and move the driveway to the west side.* Babcock pointed out that it states commercial property, not use. He then continued with the minutes. *The Planning Board approved the driveway to fit in within the commercial property.* Babcock stated that essentially, they talked about where the lines are going to be and the landscaping and buffering. *Woodruff stated that Spelman had to provide a one hundred (100) foot buffer between his commercial property and all residential property. This is a town code requirement. ZBA member Long asked what the hours of operation were, Spelman stated that the office hours were 8 am to 4:30 pm. The builders come and go if emergencies shall arise. Long asked if he terms it at 24 hours 7 days a week?* Torpey wanted to make a comment and stated that Mr. Shur, the Attorney for the Nardozzi's indicated that his use variance allowed for operations 24 hrs. a day 7 days a week, and she is assuming it's based on this notation in this meeting.

But the way that she interrupts that exchange is that Spelman stated the office hours are 8-4:30, and builders coming and going if emergencies shall arise. Emergencies are exceptions, they do not happen 24 hrs. a day, 7 days a week. It was a 7 seven day of the week company but again not that there would be traffic coming and going 24 hrs. a day. Garlapow stated the Nardozzi's are only proposing 7 am-5 pm. Torpey stated again she would refer to the letter submitted by the Nardozzi's and it states *the existing variances for the property allow for round the clock storage and the loading and unloading of vehicles for general contracting work. Nardozzi also intends to use the property primarily for storage and loading and unloading purposes with most travel to and from the property ending at 5 pm.* She again stated there is a lot of qualitative language in the letter. Such as, most travel, vast majority, likely perform less manufacturing, typically remain, approximately 6 am, approximately 5 pm, She stated that leaves wide margins. Garlapow stated that what the Nardozzi's propose will be substantially less than 24 hours a day, and what was going on up to a year ago. Torpey stated that we don't know that, because he is saying that that is within the rights of the current use of the property.

He is stating that, that is a use that he would have access to if he was to assume ownership of the property. Garlapow stated that the submittal from his attorney states 7 am to 5 pm. Plus emergencies. Thorn stated that the Attorneys closing statements at the last Board meeting said that this approved 24/7. It didn't talk about any stipulations that this was just emergencies. He feels it meant that it was a 24/7 operation. Garlapow stated that is what happened in practice and allowed to on under the current commercial use variance. Babcock stated that he does not know that the existing commercial use variance from 1997 allowed that. Garlapow stated that she does not feel the use variance has spoken to hours of use. She is saying that what's being proposed, and in the record, says 7 am to 5 pm. As far as she can tell. Babcock stated he will point out again that this is an area variance, they talk about it but they don't mention it again in any motion. Torpey stated that she would point out that Rimlinger at the end of that meeting proposed a negative declaration for SEQR based on the fact that the business was not going to change in any way, and that references back to the original use variance.

Babcock stated that he had the are variance questionnaire sheet that Spelman filled out and he reviewed that document. The document discussed the driveway movement and buffering only. He stated that they do not talk about any expansion of use, and as Torpey stated Rimlinger stated the business would not change in any way. Babcock stated that an area variance was all that was applied for and that is what was given. He asked if anyone saw anything different, All Board members agreed.

Babcock then went on to a submittal by Spelman's Attorney Mr. Refermat from July 13th. On page 5 of 8 the comparison of the Spelman business and the Nardozzi business. Spelman business listing: built product on site, received restaurant equipment and transported to sites across northeastern US to install. Babcock stated in the first use variance they talked about office, warehouse and light woodworking. Babcock stated it was mentioned there may be light woodworking down the road. Torpey stated that was still differentiated from light manufacturing, Babcock stated it was, as Rimlinger asked about light manufacturing and Spelman stated they were not looking for that type of operation. Babcock asked if anyone else sees where's light manufacturing was allowed, Thorn stated that all references to the woodworking reference words like small, little, and less and it does not talk about the expansion into manufacturing. Garlapow stated that the proposed use is not manufacturing, so she is not sure why that would be relevant. Babcock stated that they are looking at the comparison chart and looking at what they are saying was happening on the property as was allowed and in contrast as to what we're looking at in the three variances that were granted and there is some interpretation to be done. Babcock stated they have not gotten to the Nardozzi's yet, Garlapow stated that's what we are interpreting though, what the Nardozzi's want to do under the current use variance. Not whether what Spelman did was right or not. Babcock stated she was correct, but would like her to indulge him and go forward with this review. Spelman's list also states 54 employees at peak, shop office employees work at Rice Rd. Installers and field crews began and ended shifts at the shop. Also working around customers open operations. Babcock stated the mention of 54 employee's, they understood that there were employees that worked off site, it was mentioned. Babcock read from the 1997 minutes where Spelman stated he has eight employees and are considered a small contracting business. He stated that maybe there would have been 2-8 employees on site, but here it states 54 at peak, it states they began and ended shifts at the shop, also working around customers open operation.

He stated if someone had come in and stated they were going to have 54 employees at the shop, that may have had made a difference on what the Boards thoughts were back then. He went back to the onsite operations, they fix and maintain their own equipment at headquarters, automated manufacturing equipment, and light duty construction equipment. The main building closest to the road is currently a professional office building. It states under equipment, that trucks and trailers came back to the shop at the end of each shift. Each shift received daily tractor trailer deliveries, Babcock stated in the record Sue Uihlien asked about deliveries and Spelman stated once a week, with UPS occasionally. Under Hours it states trucks coming and going 24 hours per day on some projects. Babcock stated in the area variance they did discuss hours of operation, they stated 8 am to 4:30 pm. with the builders coming and going if emergencies should arise. Under Insurance, it states general contractor building, range from plastic laminate countertops to replacing underground sewer lines to building additions. Babcock wants to point out that what might have been there before the cease of operation of Mr. Spelman's business, was a little bit more than what was talked about at the meetings. Garlapow stated that the variances that were approved at those meetings never put any restrictions in place to do with any of these topics. She stated that under NYS law the Zoning Board is charged with qualifying and putting reasonable restrictions on the variance. It was a general commercial use variance. Torpey stated that none of those were also never explicitly granted. She also stated were still looking at a Community Commercial (CC) use variance, and we have to abide by the code under the CC district vs the light (LI) and general industrial (GI) Districts.

Babcock stated that he feels commercial means commercial and not light or general industrial. Crocker stated that he feels commercial means commercial. He thinks that a general heavy highway contractor is different than a light woodworking operation that is similar to a home occupation, which is what the use variance was granted for. He stated that any time manufacturing came up in any of the documents, it's been called an incorrect term, or not light manufacturing specifically. Then he went on to say in 1997 they granted a use variance for light working 2-8 employees. In 1999 there was an area variance to add two acres, in 2002 there was an area variance to grant a driveway in 2003 they added a 24 x 30 addition. Now they are requesting a 40 x 80 addition, 10-15 employees, several large trucks parked at the end of the workday. And trucks overnight for repairs or maintenance, for a general heavy highway contractor. Garlapow stated initially a commercial use variance was granted. It wasn't qualified by anything and no restrictions were put on it. She stated they have to look at what our code says now and see if what the Nardozzi's are proposing to use the property for fits in with the CC District. She stated to Tim's point of heavy highway contracting, she does not believe any heavy contracting work is actually taking place at the site. Crocker stated he agrees with that. She then went on to say its office personnel and storage of equipment, and repairing of their own equipment which is ancillary to their business. They are not in the business of repairing equipment for others. Crocker stated that he feels that part of what they are looking for is the ability to do that. Thorn stated that they are bringing their heavy equipment back to this facility for outside storage and repair, Crocker stated that's what he meant. Torpey added that she would quote community commercial code section 135-46 C. (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.* (3) *Outdoor storage of products sold on the premises, provided that such areas are not located in the front yard portion of the lot. All outdoor storage areas shall be fenced on all sides, except those immediately adjacent to the side of a building.* She stated that a highway construction company is not selling their products on the premises. She stated if you go into the LI District 135-47 that's where you get into light manufacturing and warehousing, machine shop operations, and other uses similar in nature and scale. She then went to the prohibited activities, section F. (1) *Dissemination of dust, smoke, observable gas or fumes, odor, noise, vibration or excessive light beyond the immediate site of the building or buildings in which such use is conducted.* (3) *Harmful discharge of waste materials, including refuse and airborne or waterborne wastes.* She stated that large heavy construction equipment does emit diesel fumes which does have particulates, particulate matter is a major air pollutant.

She also pointed to G. General Provisions (1) *All processing of materials, including fabrication, shall occur indoors. There shall be no outside parking of machinery, equipment or commercial vehicles, except during business hours.*

Then she moved onto general industrial 135-48 A. Purpose. *The purpose of the GI General Industrial District is to provide for the establishment of industries, essential to the community's economic development; maintenance of a well-balanced industrial environment; and not be detrimental to other adjacent developments or to the general community health, safety or welfare of the community. She stated that the parcel is in an AR-2 district there are no other adjacent developments.*

Then she pointed to B. Permitted principal uses, (5) *Building materials yards, excluding concrete plants.* (7) *Construction equipment storage and repair.* (8) *Public buildings and grounds, including storage and repair.* (9) *Public utilities substations and uses, including storage and repair, power plants and similar uses.*

She stated storage and repair is part of general industries. She stated that it is not cited in either of the other two districts, CC or LI. Garlapow stated that what she read out of the General Industrial District is permitted principal uses, and that means a business that is principally in the business of doing one of those things, and that is not what is being proposed. Torpey stated that as she stated before, it was described as a principal use of the property. Garlapow stated that the submission by their Attorney does say they will use the existing building including the manufacturing area as warehouse storage, the paver is stored in Webster, and they will continue to use the front office space. Thorn stated that for the moment they are not adjudicating the variance, they are trying to analyze if the use changed. Was it sufficient enough to get the variance in front of us? He then went on to say even if it is not a principal use, it is a change of use. Even if it doesn't fall in general industrial, a change of use for the property and how it was intended to be done as we just read through the variances warrants the fact that a use variance would come in front of us. Garlapow stated she thinks it's whether the use they are proposing is a commercial use under the code. It can be a different commercial use. Thorn commented that commercial use is not specifically stated so the Board is looking at it, reading the code trying to analyze does it fall within what was initially granted. Torpey stated that is why Mr. Kier brought it before the board. Garlapow stated that Spelman was granted a general commercial use variance, it does not matter what Spelman did before, she feels the only thing the Board should be looking at is Mr. Spelman has a commercial use variance, under the code for commercial does the Nardozzi's proposed use fit within the purview of what's offered under commercial in Bloomfield.

Babcock stated that he wanted to look at the 1997 ZBA wording of things and what they did, that is why the Board is here. He stated that there are only three documents that give any allowable use to the property. He asked Garlapow when they say commercial, does she believe that means they meant community commercial as defined in the current Town code? She stated that the Town and Mr. Spelman have operated under that for approximately twenty-three (23) years. Torpey commented that based on what Nardozzi has stated his intended use is, she does not feel that it falls under the community commercial code. In the submittal's the Nardozzi submitted he talks about around the clock truck traffic, storage and loading, external storage, and repair of construction equipment. Also, potential use of light manufacturing. As it stated they would likely perform less manufacturing, it does not say they won't do any manufacturing. That is not under the current use.

Garlapow agreed that cannot do light manufacturing under this use variance at the property. She also does not see anything in the code re: hours of operation or number of employees, so it's somewhat irrelevant in the analysis. Garlapow stated that under 135-46 B. (3) *Shopping centers, malls, plazas or other grouping of commercial uses and buildings.* She believes that this section has a carve out for office space combined with other buildings for storage, in her mind is a grouping of commercial uses. Torpey asked Garlapow if she was hinging that on the fact that the hours of operation are not specified.

Garlapow stated that was a general point that she does not think the comments about hours of operation should have bearing as there nothing in the code about the hours of operation of commercial business. Torpey stated that the reason she mentioned the 24/7 operation is because those are large vehicles going up and down the street. They do have vibration; they do have dust and fumes. It is stated in the LI district under the prohibited activity these items are listed. It's also prohibited in the CC, and the only place that is accepted under Town Code is in the GI district. Torpey then stated that outside parking of machinery and construction equipment storage and repair which are in the Nardozzi's statement of intended uses is not allowed in the CC district. Garlapow again stated that she feels what is being proposed is within the prevue of the code. Torpey asked her how she reconciled that with the fact of outdoor storage of equipment and repair? Garlapow asked Torpey where outdoor storage of heavy-duty construction equipment and repair is prohibited in commercial. Babcock stated that it's not mentioned, and its only mentioned in GI. Torpey stated that the only mention of allowed outdoor storage in the CC district is geared towards retail, not heavy industrial paving and construction.

Thorn wanted to mention that the Board in doing interpretations does have to look back at the intent, it is a valid point to look at what was intended when this was granted. He stated he doesn't know how specific you have to be to the letter of the code because some of it is based on the intent of the Board members at the time. And he believes it has been upheld in many rulings that it's also to be considered as part of what we are supposed to deliberate on. He stated it's not enough to say, I don't see a period here, it has to be included right along with the neighbor's recommendations. It has to be considered, but it does not have to be overwhelmingly considered and it does not have to make up 99% of the decision. It is an allowable feature to add into the deliberation. Babcock agreed.

Babcock asked for any more input, Crocker asked if there was an end in sight, Babcock stated he feels there is. Torpey wanted to read from the OSHA definition of heavy industrial machinery, known as powered industrial trucks, specialized motor vehicles, mobile powered propelled trucks used in push, pull, stack to procure materials. Standard interpretations depending on industry type, general industry and construction: fork lift, tractors, platform trucks, or other specialized trucks powered by electric motors or internal combustion engines. She stated these are all listed under heavy industry by the OSHA standards.

Babcock stated it was getting late, **Thorn made a motion to adjourn and hold the final determination until the next regularly scheduled meeting giving the Board time to review input from every Board member and the input from the Attorneys given tonight. He wants to make sure all of the possibilities are thoroughly thought through to make the correct determination. Crocker seconded the motion. Garlapow asked if the meeting should be sooner, it was decided that the next meeting would be at the next regularly scheduled meeting of August 26th 2020 at 7:30 pm. All Board members present voted aye, Vote was carried unanimously.**

Respectfully submitted,

Kimberly Rayburn Planning & Zoning Board Secretary