

# TOWN OF EAST BLOOMFIELD

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## Zoning Board of Appeals August 26, 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), Joshua Levitt (Town Attorney), James Spelman (Applicant), John Refermat (Spelman Attorney) James Nardozzi, Michael Nardozzi (Purchaser of the property), Neighbors: Ron Uihlein, Russ Kenyon, Ken & Charlene Dehn, Jennifer & Brad Murray, Kelly & Taine Talbot, Todd and Kathy Robinson, Fred Haeflein, Larry Graves and Terrance Robinson (Attorney for the neighbors).

**Babcock Re-opened the continued meeting at 7:40 pm with the Pledge of Allegiance. He re-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 Officer's 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. Interpretation of the determination of the Code Officer to send a new use variance application for Spelman to the Zoning Board of Appeals, if the new use does not fall under the existing Use variance then a new use variance will be required and reviewed.

Babcock stated the first thing on our agenda is to take care of some old business. The Board needs to approve the previous meeting minutes. Thorn made a motion and Torpey seconded the motion to approve the meeting minutes from 6/24, 7/15 and 7/29/ 2020. All board members present voted aye. Babcock stated when they left off at the 7/29 meeting, they had been deliberating on the determination of the interpretation by the Code Officer that was it necessary for Spelman to apply for new use variance to be reviewed by the ZBA. They had closed the public hearing in order to deliberate at that time. They noted the public hearing could be reopened for review of a new use variance based on the outcome of the determination of the interpretation. Babcock read from the last meeting minutes that stated: *the board needs to close the public hearing to take up the deliberation of the determination of the Nardozzi's proposed use and decide if it fits in with the existing use variance. If not, a new use variance would be required and the public hearing would be reopened. Babcock made a motion to close a public hearing to deliberate on the first issue, all Board members agreed.* Babcock stated that right now the public hearing is closed and the Board is going forward with their deliberation on the interpretation. Babcock asked for any more comments or any more deliberation from the Board. Babcock stated that he thought they deliberated quite extensively and they examined it pretty well. Garlapow stated she did some refining of her thinking and there's some thoughts that she would like put into the record. She read the written statement she prepared. (See insert below).

*August 26, 2020*

*"Under NY law and Town of East Bloomfield code, ZBAs are authorized to grant variances. The same laws grant ZBAs broad discretion to "prescribe any condition that it deems to be necessary or desirable". No such conditions were prescribed in connection with the 1997 Commercial Use variance granted with respect to 6600 Rice Road. It is simply a use variance for a commercial business on 2 acres. That said, it is reasonable to examine the minutes from the meeting whereby the 1997 Commercial Use variance was granted to glean the ZBAs intent in granting the 1997 Commercial Use variance. I will call these minutes the '97 Minutes. The '97 Minutes indicate that the commercial business contemplated was one whose primary functions would be conducted offsite ("The majority of the Spelman's business is conducted off site").*

*The barn building proposed in the '97 Minutes was contemplated to be used for "office and warehouse space". In numerous instances throughout the minutes, growth of the operation and buildings was contemplated – expansion of the barn building from 2,400 sq. ft. to 6000 sq. ft. - that's a 250% expansion. There was also talk of vehicle fleet expansion to include additional workers in "the future". Future development of the acreage at 6600 Rice Road was also contemplated – in the '97 Minutes Spelman stated 2 houses were contemplated on the property and Johnson stated there was enough acreage for 6 homes. It was intended that the owner would live at 6600 Rice Road. It was stated by Spelman that "they have 8 employees at present". It also appears that of importance to the '97 ZBA was that the new building would be in keeping with the local architecture. This was reiterated in the final whereas clauses. Noteworthy is the statement in the minutes made by board member Marcellus that a permitted special use in AR-2 at the time, at the 6600 Rice Road property, was an airstrip. Marcellus stated that "Spelman's operation seemed to create minimal demand on the area". Because the '97 ZBA Minutes remind us that we are talking about what is otherwise an AR-2 district, we should be cognizant of that fact. This is not a rural residential district or a residential district, this is (other than the acreage covered by the 1997 Commercial Use variance) an Agricultural Rural Residential District. Permitted principal uses are farming operations and the use of land for agricultural purposes, among other things. Farming entails the use of heavy farming equipment and the Town of East Bloomfield code allows under 135-42(C)(3) "Customary farm accessory buildings for the storage of products or equipment..." As the 1997 ZBA couched its analysis remembering the surrounding area is Agricultural Rural Residential, so should we. The '97 Minutes make remarkably few references to what will actually occur with respect to Spelman's business. Spelman states possibly light wood working and that he is not looking to engage in manufacturing. The ZBA members appear to be more concerned with the placement of buildings with respect to drainage and also ensuring the buildings are in keeping with look of the area.*

*In 1999, the ZBA granted an "extension of an already existing commercial variance" adding 1.492 acres to the parcel subject to the 1997 Commercial Use variance. This extension was for the purpose of accommodating "additional buildings needed for storage of their trucks and equipment".*

*In 2002 a variance was granted for "driveway and for future expansion, 100 ft to East and 225 Ft to North".*

*Now, back to the present -- by virtue of an appeal from a decision of the code enforcement officer, the ZBA is being asked whether the proposed use of 6600 Rice Road by potential buyer Nardozzi falls within the scope of what was contemplated by the 1997 Commercial Use variance.*

*To reiterate, the 1997 Commercial Use variance language is broad – there are no conditions or restrictions imposed. The variance simply states it is for a commercial business on 2 acres. It does not prescribe what type of business. Therefore, it is reasonable to look to the '97 Minutes to determine what the ZBOA was contemplating.*

*Distilling what I have previously discussed, and relying heavily on what was discussed and contemplated as reflected in the '97 Minutes, it appears the ZBOA in 1997 contemplated and anticipated the following:*

- (1) A family owned business where the owner would live on the premises.*
- (2) A business whereby the primary functions of such business would occur off site.*
- (3) Buildings architecturally in keeping with the local area and proper placement of such buildings.*
- (4) Buildings intended for office and warehouse space.*
- (5) A business that would expand – both in terms of employees, equipment and buildings/storage space.*
- (6) A business with 8 employees, anticipated to grow.*

*The proposed use of 6600 Rice Road by the Nardozzi business appears within the scope of what was contemplated in the granting of the 1997 Commercial Use variance as follows.*

- (1) Nardozzi's state the business is family owned and a member of the family will live on the premises, as was anticipated by the '97 board.*
- (2) The Nardozzi business is one in which its primary functions – highway construction -- are conducted off site, as was anticipated by the '97 board.*
- (3) I have not seen the building plans for the new structure but it would need to be in keeping with the present and local architecture.*
- (4) We are advised by Nardozzi the buildings will be used primarily for office and warehouse space, as was anticipated by the '97 board.*

- (5) *Nardozzi has not, to my knowledge, put forth plans for future growth at the 6600 Rice Road premises, other than the proposed new storage building.*
- (6) *We are advised by Nardozzi that 10-15 individuals will report to work at the premises on a daily basis, also anticipated by the '97 board.*

*The general tenets contemplated by the ZBOA in the '97 Minutes appear to allow for the type of business functions Nardozzi proposes at the premises, therefore I believe it is reasonable to conclude that the 1997 Commercial Use variance, as amended, permits the business activity proposed by Nardozzi. Lastly, I believe we would be remiss if we analyzed this question in the vacuum of '97. We must recognize the subsequent acknowledgement the ZBA gave of certain business activities occurring at 6600 Rice Road – for instance office hours of 8-4:30 and potential for emergency activity 24/7, as well as loading and unloading activities and general contracting and manufacturing activities – all of which are referenced explicitly in ZBA meeting minutes. The ZBA and the Town tacitly in some cases, explicitly in others, permitted these activities to occur over the intervening years since the '97 Commercial Use variance was issued. If there was an expansion of use, here is our opportunity to get back the scope originally anticipated by the '97 board. Apparently, Spelman was up to 54 employees coming and going with manufacturing taking place -- with the Nardozzi proposal we can get back to only 10-15 employees coming and going, a family owned business with an owner that will live on site and no manufacturing. There may not be many opportunities for this property like the current proposal, which appears to be in line with what the '97 board intended. Again, for the reasons stated above, I believe it is reasonable to conclude the 1997 Commercial Use variance, as amended, permits the business activity proposed by Nardozzi”.*

Babcock thanked Garlapow for her comments, and asked if any other Board members had any further comments. Thorn stated, as it has been stated before, the reason the Code Officer sent the use variance to the Board, and at this time are only talking about the interpretation, is because the use is changing and including Nardozzi's construction equipment repair and outside storage of equipment. Neither of those were ever intended mentioned or allowed by the 1997 ZBA. He believes that indicates a correct interpretation by Kier. The Code Officer believed that this was indeed changing the uses of the property. Enough so that it should have come in front of the Board. He then reiterated that this was said in the minutes at a prior meeting. Babcock asked for any further discussion. Torpey stated she will reiterate comments she made at the last meeting as far as she has observed the description of the business that Nardozzi's want to bring to the property has changed over time. She thinks that he is trying to fit into an acceptable interpretation of what that business will be. She has heard that heavy industrial machinery will be stored on the property, she has heard that truck traffic will be coming and going. It's been stated that the property appealed to the Nardozzi's because it is occupied on four (4) sides by major trucking routes. She's not sure she agrees with that. She sees some inconsistencies in the communications that were put before the board and that calls into question the very clean and descriptive form that the Nardozzi's just gave of what their operation would entail. She stated looking back on the record for the Spelman use of the property, and what exist there now, as stated before is not what was approved by the original 1997 use variance. She would not put it out of the realm of the possibility that something like a heavy paving construction company coming in and owning the property would gradually morph outside the lines of whatever was agreed to by this Board if a use variance were to pass.

Garlapow would like to raise a hypothetical. If the deal falls through and the Nardozzi's go away. If new buyer then wants to use the property solely for AR -2 purposes such as a commercial farmer, she stated that would be permitted under AR-2. They would use all the existing buildings for storage of combine's, heavy equipment for excavating, and utilize equipment to move that heavy equipment if necessary. She asked if a farmer could store any of that type of equipment that they wanted?

Babcock read from the definitions of Town Code code for agricultural farming activities.

*Chapter 135-8. Definitions*

**AGRICULTURAL OR FARMING ACTIVITIES**

*The use of the land for agricultural purposes, including, but not limited to: dairying, field cash crops, pasturage, fruit and vegetable farms, nurseries, animal and poultry husbandry and the necessary accessory uses for storage; provided, however, that the operation of any such accessory use shall be incidental to that of the principal agricultural activities.*

Garlapow then stated if you have a dairy farm, and the farmer wants to bring in heavy equipment to move earth to make trenches for drainage as part of their business, and they also want to repair those machines in those buildings, it is her understanding that they would be able to do that. She then stated in this case, the machines might be repaired onsite but they are not being used onsite. Babcock stated that he does see her point, but agriculture is by definition an approved use in the AR-2 district. Babcock stated there have been similarities that the applicant has made to the machinery that they use in their business that are very similar to what a large-scale farming operation would be using. But the other part of that is, we do have a right to farm law, and there was a reason for that. It's because there were farm uses that were not necessarily compatible with residential use. And because we combined our ag and residential in the same area, the town came up with the right to farm as part of our code. Unfortunately, as similar as other businesses might be in the equipment they use and the things that they do, they didn't say that they have a right to industrial or right to manufacturing in a residential zone. They did not include those rights in that district. Garlapow stated that a farmer could come in and do corn and use huge combines. They are within their rights to store those on their property and work on them to operate their business whenever they want and to make all the noise associated with that. That would be permitted under our Town Code. Babcock stated ag & residential uses are permitted on this property even though there is also a commercial use variance that is present. Agricultural & residential use on the parcel never left the District. Garlapow stated that was her point. Babcock said she is correct. Thorn stated the Board is still not discussing the interpretation. Babcock stated he thinks the Board is done addressing the interpretation issue. They need to focus on finishing that up. He asked if anybody has a motion that they would like to make or try to start drafting so they can come to a conclusion. Thorn stated he would start one. **Thorn made the following motion and Babcock seconded the motion: After evaluation of the following: Town Code, submitted documents, and the original use variance minutes, he believes construction equipment storage and repair are new uses, and the Code Enforcement officer was within his rights to have the new use variance forwarded to the Zoning Board of Appeals.**

Garlapow asked what if we don't agree with that? And stated she does not agree with that. Babcock stated there was a motion, and he seconded the motion. If she or the rest of the Board would like to discuss the motion, they can do that now.

Babcock asked Garlapow if she would like to discuss the motion and asked her if she wanted the motion to be read back, she stated sure. Babcock asked to have the motion read back. Thorn started to read the motion a second time, Garlapow interrupted and stated that the question is, if the rest of the Board is in agreement that the proposed use does not fall within the existing use variance is pointless. Then she stated what if she started off the motion, then no one agrees than its pointless right? Babcock said she can make a motion, they can discuss it, then they can vote on it. Garlapow asked if they could have a little more discourse on what the other Board members think. She stated she thinks she can guess, but do the other board members think it falls within the current use variance? She asked Torpey, and she stated she does not feel it falls within the current use variance that is on record right now. Then she asked Crocker. He asked if they were voting. Babcock stated they were not. Garlapow stated it was pointless for her to change the record if the other four (4) Board members are in agreement. She stated that she has gone on record with her opinion. Babcock then congratulated her expression of her viewpoint and telling the board of what she thought. He stated we have reviewed this at the previous meetings and we picked up where we left off at the last meeting and hearing no other comments at that time, he thinks the motion is appropriate. He then stated to Garlapow if she wanted to make a motion before Thorn did, she could have, but he got his out first. Garlapow asked what happens if she makes a motion that no one agrees with? Then she stated since she has been on the Board, she has not been through this, so she's just questioning the process. Babcock stated that if Garlapow had made a motion that was contrary to Thorns, he probably would have seconded that motion well. Then they would've discussed it and voted on it as a Board. The outcome is what the outcome is. Garlapow was just trying to understand how that works. Babcock asked for any further discussion. There was no other discussion, **Babcock called for a roll call vote. Record of Vote: Rosemary Garlapow Nay, Art Babcock Aye, Sonja Torpey Aye, Tim Crocker Aye, Mark Thorn Aye. All Board members present voted Aye, with the exception of Garlapow. Motion was carried. The deliberation is now over.**

Babcock then went on to new business and wanted to discuss the Comprehensive Plan with the Board before they did anything else. He stated that they were recently resent the draft plan asking for comments. The Board

has not discussed the plan as a Board. The plan committee typically seeks comments from other Town Boards to obtain information on items that could be added or might need to be modified based on their ZBA decisions in the past. This Board looks at items that keep coming up over and over and one of those things from years past is from when people kept coming in and wanted to have a senior or in-law apartment on their own property or multiple residential where single family was only allowed. The Board went back and informed the Town Board that and they updated the code in some places to allow those uses with a special use permit. The Boards input helps drive the steering towards changes or modifications. Babcock stated that at the next meeting they can go through the document and hopefully put something together that they can use. Rayburn asked if the Board would like a list of items they have reviewed in the past few years. Babcock stated that would be useful.

Kier asked to speak on behalf of the Comprehensive Plan Committee. He wanted to make everyone aware that the committee will have a public hearing on 9/16/2020, the committee will be asking for feedback and people can submit questions. Thorn asked if there is a specific time that they are looking to make a final approval on the plan. Kier stated that there is not a specific date right now, but sooner than later they would like to have the public hearing and then barring any major changes they would like to move forward with the respective Town Board and Village Board of trustees to go ahead and pass a motion to accept the new plan. Thorn was making sure they can discuss this at their next meeting as a group and still have time to get their comments to the committee. Babcock and Rayburn felt they would have time. Kier stated the sooner the better.

Babcock asked the Board for any new business or anything they wanted to discuss, there was none. He then reminded everyone that before we branched off into the interpretation for the use variance being sent to the ZBA by the Code Officer we had a use variance application in front of them. They had noticed the public hearing for a Use variance for Spelman's property. He stated if the parties are ready and they want to, they can pick up where they left off and continue the use variance portion of the application if the parties are in agreement. Babcock asked Refermat if he felt he would be ready for a new use variance review, as up until we made that interpretation there was no forgone conclusion that we would be continuing this. Babcock then stated we can continue reviewing this and see where it takes us. It might go to the end tonight. Or if any party wanted more time because they felt they needed more time the Board could continue the review at the next regularly scheduled meeting in September. He stated they publish all of their meeting dates at the beginning of the year and the next meeting is the fourth (4) th Wednesday in September 9/23/2020. Shur, the Attorney for the Nardozzi's is not present. Robinson is in attendance; he is the Attorney for the residents. Babcock asked Robinson and Refermat if there was any reason that they would want the Board to push off the review until the next meeting date, or continue the review tonight. Refermat stated that he appreciates the chairman asking but they put in proof, secondarily, in support of a new use variance if it became necessary so he is happy to have the proof that is in the record considered tonight. If it turns out that there is something more the Board thinks they need in terms of information for example, then it may be appropriate at that time to push it off to the next meeting. That will Give them time to gather information in response to any request the Board might make. He stated they certainly put evidence in the record in support of a use variance. Babcock then asked Robinson. Robinson stated they are comfortable going forward and hopes the Board comes to a conclusion tonight. Babcock reminded everyone that the public hearing is being continued from the previous meeting, and everything that you have said is on record in those minutes and they have been approved. There will not necessarily be a need for them to restate anything that they have already stated. Refermat asked the chairman if he might interrupt for a minute, Babcock allowed it. Refermat stated that Shur is not present but Shur's clients are, so can we ask them if they are ok with moving forward. Nardozzi stated that their position as potential buyers are that they have provided everything for the Board to consider. They have been specific and if there is a specific question that comes up, he is more than happy to speak for himself as he is very confident on his position. Babcock acknowledged that.

Babcock then addressed the Board and asked if they all understood where they are at this time. The public hearing will continue from the previous meeting in regards to the Use variance application. Everything from the previous meeting are still to be considered as part of the record. He stated he was just submitted documents yesterday from Refermat. Refermat stated he was simply the messenger if it's the Nardozzi's list of uses for the property. Babcock asked the Board if they all received the submittal, they all stated they have it. I was then added to the record.

Babcock acknowledged The Board received the meeting minutes from the Ontario County Planning Board that also included the technical review by the Ontario County Planning Dept. Those will be added to the record as well. He stated that they also received yesterday a letter from Robinson that will be included in the packet as well. Refermat stated that he does not believe he has seen a copy of that and asked him if he had an extra copy. Levitt stated the letter was dated August 20<sup>th</sup>, 2020. Robinson stated that it was submitted last week. Refermat stated that whenever it was submitted, he did not receive a copy. Rayburn gave Refermat a copy of the letter. Refermat asked a question, he thought when the record was closed at the last meeting which was July 29<sup>th</sup>, the record was closed in respect to both the interpretation and the use variance. Babcock then read the motion from the last meeting: *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.*

Babcock then directed his comments to the Board. He asked the Board if they were ready to pick up where they left off and asked if they feel comfortable discussing the use variance application tonight. Thorn stated he does, Garlapow stated she does, Torpey and Crocker both stated they are. The public hearing is open, and he asked if there was anyone that had anything they would like to say. He reminded them that anyone that has spoken before their comments are in the minutes and they have them in front of them.

**Jennifer Murray** asked Babcock to explain exactly what they are deliberating on now. She asked if it was an application for a new use variance. Babcock stated it is. She then asked what kind of use. Babcock stated it was for Nardozzi's proposed business use to be at Spelman's property. She asked if it will be an industrial? Babcock stated that at this point in the previous meeting minutes the Board was polled and at that time it the Board made the determination that the use proposed fit in with the general industrial use in our community. He then asked her if that answered her question. Murray stated it did.

**Haeflein** stated that basically the Board is looking at changing it to an industrial piece of property? Babcock stated not necessarily blanket industrial, but maybe specific to Nardozzi's use. Specifically, the outdoor storage of construction equipment and the repair of construction equipment. Haeflein interrupted and stated basically the Industrial code for Bloomfield would be allowed on this property in the AR-2, pretty much. Babcock stated that depending on what a motion to approve a use variance would say. There could be very many limiting factors that would require only specific options. Haeflein stated except like in the Spelman property it could morph into something else. Babcock stated that is correct. Haeflein stated he had special uses he was allowed to do and it went into a whole different realm of things. He then stated so now they can do an industrial allowable use over there and once again; will someone enforce that? **Murray** stated that first Spelman has to qualify to get a use variance for industrial. Babcock stated that the Zoning Board, in their charge, can impose any limitations they feel are necessary. Haeflein then stated but they can't enforce them. Babcock stated they are not enforcers; he is not the Code Officer and he can't not answer that. All he can tell you is that there is a Code Enforcement Officer and there is a definition of his job description. **Ken Dehn** interrupted and then addressed Babcock and he stated based on Nardozzi's saying he has submitted his plan and hasn't made any changes to it, other than what's already been submitted, it would seem to him that it would be a contradiction for the Board to approve a new use variance with the same uses being proposed that you just voted against in an AR district. He stated he's not an attorney but it occurs to him that if he's requesting to repair equipment on that property as part of the new use variance, doesn't it fall under the same category of industrial that you just determined was not acceptable. Babcock stated that what the Board was charged with was to determine whether a use variance was required or not. They did deliberate on that. He stated they did look at the previous meeting minutes, they looked at what Kier had said and what the Nardozzi's had said their proposed use would be. The Board came to the determination that a new use variance would be necessary and the Board upheld the Code Officer's decision that a new use variance was required for Nardozzi's proposed use of the property. Babcock then stated to the public don't read anything into that. That they turned anything down in terms of a use variance application. He stated they are still reviewing that. The original charge was to review a new use variance application, all they have done is get off of that track and got on another track to review and interpret the Code Officer's decision before they went any further with the use variance application. They are still in the middle of a use variance application.

Garlapow stated that she thought what was just voted on was that the proposed use's that the Nardozzi's have made does not fall within the current existing use variance, that's all the Board decided. The existing use variance states it is a commercial use on a 2-acre plot of land. She stated that is what the Board just said does not work for the Nardozzi's proposed use, and that's the only thing we concluded. **Dehn**, stated he was sorry but he is confused. If it didn't work under the existing variance because it was termed to be industrial, now there's a new use variance, Garlapow spoke up and stated we did not make that decision in our interpretation. Babcock stated we never determined it was previously industrial. Garlapow stated that all they said was that the Nardozzi's proposed use does not fit in what was approved in the 1997 commercial use variance. Torpey stated that it's the difference between expanding upon the existing use variance and requiring a new use variance because it constitutes a new use. And in the discussion that took place, the definition for some of the other uses came up, and those other uses were considered to be light or general industrial uses. If they don't fall under commercial, then it requires a new use variance. **Kelly Talbot** asked if there will be any consideration of the character of the neighborhood being changed by an industrial use. Torpey stated that will be in the discussion. Thorn stated there is a discussion going on, we are evaluating the use variance and everything about it. Then deciding on whether it will get approved or not. Garlapow stated she did not think that the Board is contemplating granting an industrial use variance. She thinks they are looking to possibly expand the current uses that have been previously authorized to potentially include the three things they did not approve. Torpey spoke up and stated her understanding is that we rejected the premise that the current use can be expanded. It requires a new use variance. We are not talking about an expansion anymore under the existing variance. Garlapow stated it's a new use to include the three items we just stated were not permitted by the old use variance. She wanted to be reminded of what they were besides outdoor storage, Torpey stated storage of heavy industrial equipment and repair. Garlapow stated she does not feel we are permitting an industrial use here. **Dehn** stated that those uses were under the description of industrial at the last meeting. Those criteria were listed under light industrial. Babcock stated that if they were to ever pass a variance and they included in their motion/minutes that we are here to grant an industrial variance we would be doing a great disservice to the community and why they are here. That probably would never happen anyway and he does not think anyone has ever done that. Specifically, most ZBA's if they do allow something it is on a limited basis. They try to grant the smallest variance possible to provide the relief sought. It's not an open-ended zoning district change. It's to that property for that specific goal. **K. Talbot** spoke up and stated but if you call it something else like commercial but you have industrial work, machinery and traffic along with office hours and 4 am work, you can call it whatever you want but doesn't that describe industrial? Babcock stated she was right, it might. She stated its just going outside the boundaries and again, it will grow. **Dehn** stated if you saw what was approved in 1997 and what is there now, it definitely morphed way beyond what was ever granted. Someone from the public stated "just a little". Dehn then again spoke and stated if the methodology here or the intent is for those supporting the Spelman project to sneak in under the radar the best they can with the understanding that we will just do what Spelman did and we will morph this thing ten years down the road to fit it to what we need it to be. That is his biggest fear. There will be a little maneuvering and they will talk the members of the Board into thinking lets just let them get in and we'll police it, which we just heard there really isn't much of a policing effort. He stated he does not know how this is going to play out but it concerns him that we will be tap dancing through this and trying to take care of somebody using whatever methodology is available. He feels the argument has been pretty compelling to most of the Board in terms of why it shouldn't have been there. The old variance should not have been allowed to be used in this situation. It appears to him that those same conditions still exist in a new request, how can we turn around and say that's ok. He stated what if Nardozzi said that he will bag the whole idea of repair and equipment storage and a year later that's happening on the property, what will happen? What will the Town do? Obviously, we saw it with Spelman's property there was no policing, it grew well beyond what was intended and permitted and certainly there's no consequence for that. He kept the property looking good and a lot of it was under the radar, but a paving company that has industrial use isn't going to be under the radar. Babcock stated and to your point you stated a lot of that stuff previously and the way we look at this is, the use proposed. He then stated if there were no portions of the proposed that did not fall under the 1997 or the existing record of what was approved to be there then obviously our Code Enforcement Officer could have simply told them in his judgement you can move in there. Babcock then stated there is tab on the Town website for a complaint form if you want to register a complaint about a number of things that fall under the Code Officer's prevue. **Robinson** stated that the Code Office is the enforcers. Babcock stated he believes a lot of the Code Officer's job is to work with the community on concerns.

The Board's job is to look at a proposal and hope that someone will enforce it. They can put everything they can specifically in writing when they allow something to limit the allowance to the least possible variance necessary in order to achieve the relief for the applicant. **Charlene Dehn** asked if the Board had stated that the Board agreed that the description of the variance is general industrial? Babcock stated that he can read her the meeting minutes, he also stated they were on the website as well. She stated that she thought they just said it. Rayburn stated what they said was that portion of his proposal was general industrial not the whole proposal of use. Only the outside storage of equipment and repair. C. Dehn then stated that she felt general industrial does not seem to fit the character of the neighborhood. Babcock noted that it was stated in the meeting minutes that *the Board is all in agreement that the use is considered a general industrial use*. **K. Dehn** stated so having said that, unless he's misunderstanding, he thought Nardozzi said he has already submitted and he's not changing anything, if it was a general industrial request for the interpretation, how is that changed in terms of the Boards view of it going forward? The same conditions were general industrial before and its now the same application, basically the variance now says general industrial. He is missing how the conversation could go any differently than the previous conversation. Babcock stated the uses proposed by Nardozzi fit to the Board under a general industrial use, but that does not necessarily mean that if the variance was granted that any industrial use would be allowed to utilize this parcel of property. He then stated that he can't tell them what exactly they would put as limitations on the approval if it were to be approved. He is trying to tell them that the ZBA can impose limitations in place in order to grant or provide the minimum relief to grant the variance requested. Every parcel, every application is unique and has its own specifics on how any ZBA addresses them. It is up to the Board to decide that. He then stated that again he will reiterate something from the first meeting. *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 cannot grant the Use variance.* Then he stated use variances in their very nature are typically rare. He thinks that is a well-known fact. There are four (4) mandated criteria that they have to look at. They are given to them by the state and each one of those hardships/tests, has to be proven, and they have to review that. What they are looking at is, what the proposed use is, and its beyond what's allowed there now. The Board will go through and try to quantify and ascertain where that use fits and why it is where it is in terms of whether it was allowable or not allowable. By Refermat asking them to even consider whether the use variance was necessary or not, that part of our record he thinks also helps them make this decision.

**Nardozzi** asked to speak. He feels that Garlapow stated this earlier, if the Nardozzi family had an agricultural business, would they be able to operate under the NYS law right to farm law and operate their business on that property? Babcock asked if he was asking him if they had a farm, Nardozzi stated he may own a farm. Babcock then stated that he is a ZBA chairperson and he won't speak for the Code Enforcement Officer. Nardozzi stated he is on the phone and you spoke explicitly about the NYS right to farm law, so he is asking. Babcock asked if he wanted to ask Kier. Nardozzi stated that he did. Babcock asked if Kier was still on the line and if he could hear Nardozzi, kier replied yes, he could. Babcock asked if he could answer his question for him tonight. Kier stated that if he was proposing to use the property in an AR-2 district as a farm, under our guidelines than yes, he would be allowed to operate his business that way. Babcock then asked if he would not need a use variance? Kier stated as long as he is following the guidelines of the AR-2 district then he would not need a use variance. Nardozzi wanted to ask another question. He asked if he had large tractors of one hundred and fifty (150) horse power or more and he wanted to be able to fix that equipment onsite and also store it onsite would he be able to if it were owned by the farm that he owns. Kier stated again, as long as it falls under the guidelines of the AR-2 district then yes, there are farmers out there repairing their own equipment. He then asked if he had trucks that were specifically used for farm use, would he be able to utilize those trucks on that property and on the surrounding roads to supplement the use on my farm. As long as it met the use of the AR-2 district, then yes you would be allowed. Nardozzi thanked Kier.

Babcock asked for any more questions, and gave the floor to Spelman. Spelman stated that just so he understands, in the AR-2 District with a commercial use variance there would be no allowing of construction equipment stored outside or repaired on that property without specific ZBA approval and a prior use variance. That would apply not only to this parcel but that would apply to any parcel in the district.



They would have to have a use variance from the ZBA that says they are allowed to store outdoor commercial construction equipment and repair it on the property. He asked if he was understanding that correctly. Babcock stated again, he is not the Code Enforcement Officer, but as a ZBA chair person what Spleman is saying does seem to have merit, and he will refer to Kier if he is still listening. He will also say that there are exceptions to every rule. There are some places where there is a non-conforming use where it was previously granted. There are some before 1992 which is the use variance law. There may have been some that were granted prior to that. They may not have had the same basis and deliberation test that we have now. All he can say is that could be the case. He cannot say yes or no or in any specific case. Spleman stated that is fair. Babcock asked Kier if he had anything, he wanted to add to that? Kier stated that he concurs with Babcock. He would have to look at every situation, look at any previously approved variances, any circumstances germane to that particular parcel and how it was being used and then make a ruling. Spleman then asked Kier if the variance approval or the motion whereas's, mentioned no outdoor storage that would be it right? That would be the final determining factor as to whether or not the property was compliant or in violation? Kier stated he would have to look at a specific variance in relation to the property and if it spelled out what was allowed or not allowed. He would have to look at it seriously and abide by that. Spleman thanked Kier.

**Dehn** addressed Kier. He stated that obviously it sounds like we are going to turn a paving company into a farm operation. Its another way to fly under the radar. Assuming that's going to be the new direction, a year from now when you determine that the trucks going in there really are being used for construction and they really are repairing construction equipment in this new facility. What position are you in to stop that? Kier stated that he would have to look at each individual situation. He will have to look at a particular complaint that comes up or a particular use that comes up when he recognizes it and make a determination whether that falls under an approved use, whether it's a variance or just local zoning laws. He stated after making a determination, if it doesn't fall under one of those, he would write a violation if he feels it warranted and use every method that he can to hold people accountable for what's approved. Which means they may ultimately end up going to court. Then at that point it will be up to the judge to decide whether they agree with his interpretation or not. Dehn then again thanked Kier.

Babcock then asked for any other public comment. **Kathy Robinson** stated that she has heard nothing about the new building that they will be adding onto the already monstrous structure that's already there. How does the variance fit into that? She has not heard that addressed as her back yard will be totally all building. Rayburn stated that the Planning Board approved the site plan for the addition contingent on the ZBA approval of the use variance.

**Spleman** stated that he has heard at each of these meeting's how his property has morphed over time. He takes exception to that. He then went on to say at every step of the way the Town of East Bloomfield was involved, consulted, bounced to the Attorney's, and to the IDA. They were involved for everyone of these steps all the way through. He then stated he can't tell you how notes got recorded, or how any of these other things happened. But what he can tell you is that every single time he was forthright and presented their full entire case and went on from there. He would like that to be part of the record.

**Robinson the attorney for the neighbors** then spoke. He stated that he would like to highlight a couple of key things. Focusing on the four (4) considerations. The number one and most important is that that applicant has to demonstrate that they can not obtain a reasonable return for any permitted uses in the district. For this property the permitted uses are those permitted in the code as well as the commercial use approved in 1997. All that has been submitted is information from a realtor saying that this is the highest and best use of the property there is no determination about what a reasonable rate of return would be for other permitted uses. And no list of current carrying cost. A rate of return is a calculation by where you compare the amount you receive for an asset vs what you paid for the asset. There was no information of what the acquisition cost where for this asset, much less any information about what rate of return could be or would be for any permitted use. Therefore, the variance application has to be denied on those grounds alone. As noted by the Ontario County Planning Board, *simply saying that the property has been put on the market is not an indicator of economic hardship*. Then he went on to the second requirement the applicant has to demonstrate that the hardship is unique.

The uniqueness does not apply to the applicant but to the property. He has to identify a unique aspect of the parcel. Examples would be the location or natural resources. He then stated that applicant's hardship which is legitimate and they understand the financial setback, does not qualify for an appropriate hardship for a use variance. It has to be a hardship that's applicable to the parcel not the applicant. The third one is the essential character of the neighborhood. He stated he feels you have heard ample evidence from the neighbors about how their neighborhood has been impacted over the years as the uses on this property have expanded beyond a single-family home operation. From eight (8) employees to a larger business of fifty-four (54) employees engaging in light manufacturing. And finally, the applicant has to demonstrate the hardship is not self-created. A hardship is considered self-imposed if the applicant purchased the property subject to the restrictions and was aware of those restrictions at the time. Spelman was well aware when he purchased the property that it would be subject to the conditions of a use variance. As the Board discovered that use variance was limited. He may not have intended for it to expand beyond what was granted but it did. At this point he can not claim that it is not self-created or a self-proposed hardship because now he feels he can only sell the property to a buyer that will engage in general industrial uses. For all of these reasons we believe this use variance has not risen to a level of where it should be issued and it should be denied. He thanked the Board.

Babcock asked the Board if they have any questions, or if they require anything further from any of the applicants or have any further questions. Garlapow asked to clarify what use variance this is that they are discussing. She thinks they are just talking about the uses we just denied. The new uses would be outdoor storage and repair of equipment. We are talking about a use variance in the AR-2 District which already carries with it a commercial use variance. An additional use variance to permit outdoor storage of heavy equipment, she thinks they need to quantify that. What is the Board really talking about, are those the only two things the Board is talking about? Babcock stated that there was some mention of truck usage also. That seemed to go beyond the scope of what would typically be allowed in commercial. **Nardozzi**, then spoke. In terms of the trucking he feels they have talked about the commercial uses. The majority of it was farming, to nursery, all the business's that you labeled including Spelman's. Its applicable in all the scenarios that they will utilize for the zoning that is there now and the variance, correct? He stated its his understanding that he does not believe they have ever talked about an increase use of trucks. It was very well documented they will have trucks of the same size on the road and on the surrounding roads that would go in and out of that property. He stated they gave business hours. Babcock asked Nardozzi if he felt comfortable telling him what trucks you have right now, and what trucks would be stored on the property and how they would be used. Nardozzi stated similar trucks that were there that came in and out for deliveries. Tractor trailers that went in and out of there, that would also be allowable under the commercial uses correct? Babcock stated that he is not telling him that is correct or not. Nardozzi stated that's what the Code Enforcement Officer is on the phone for. Then Nardozzi stated that what he is trying to do is keep everyone engaged on specifically what the code enforcement book allows and how his business would fit into the property. He stated that is what they have to tow the line with. Babcock asked Nardozzi if he remembered from the first meeting, the WebEx meeting when Nardozzi was talking about his current property being commercial and he questioned how it went from commercial to general industrial. Nardozzi stated he does remember that. Babcock then went on to say he went to the City of Geneva's website and looked up the Nardozzi parcel. Also, Spelman stated that he had been out to Nardozzi's operation in the city of Geneva and that he ran a clean operation and that he expected him to do the same thing on this parcel. Babcock looked at the business that is on North Genesee Street. Babcock learned that the zoning on that parcel in Geneva is zoned industrial. He stated that Nardozzi claimed he had a commercial business, and he can claim that, but where its situated is zoned industrial. Babcock looked at what the tag was for the assessment of his property and its defined as truck terminal. Babcock questioned that may be from a previous use and not necessarily the use that he has. Babcock did not talk to anybody about how he is assessed and what the primary uses are at that property. He just looked at the overhead view of it and he saw the storage of stuff within the fences, walls and buildings within the block that he occupies. He saw the storage of construction equipment, trailers and materials and he saw that he is considered a truck terminal. He stated sometimes the definition of a truck terminal most people might quickly think that is where tractor trailers park overnight coming off the thruway or a place where they go to get fixed and repaired. He then stated sometimes a truck terminal can be defined as a place where a truck is stored overnight, where it originates from, then it conducts business and then it returns to, and also, where it is maintained and repaired. Depending on the size and number of those trucks. He does not know of anything that was necessarily granted to Spelman that included an unlimited number of

trucks or the definition of truck terminal was included by anybody in any of the previous approvals. Babcock wanted to ask Nardozzi as he is kind of familiar what a heavy highway civil construction company does and he knows the equipment that they have, and he knows what they do with it. Now, he's just wondering if Nardozzi wanted to go on record tonight to tell us what that would be? Nardozzi stated there are two things he would like to say. One is your Birdseye view, blasé drive through of his current operation, they bought the property that was in an area that was zoned industrial, that goes back to the early 1900's. He agreed that truck terminal is on the ticket, however, that was not applied for or sought out by them. There is a landscape company on that property, there is a mason company, a small excavation company and also an associate and engineering company on that property. He did not apply for a truck terminal, nor did he put in any of the records that he is applying for a truck terminal now. He stated that should be duly noted on the record. With respect to how we will operate, there has been information provided, specifically talking about the number trucks. Both of the attorneys have put on record and he is confident if the Board reviews that in detail, it will answer the questions being asked. Garlapow asked if they are proposing to move all of the Geneva operations to Rice Road? Nardozzi stated they are not; She then asked if they are going to be keeping that and operating out of that location. Nardozzi stated that they would be keeping that facility and they work in Syracuse as well. Garlapow stated that the Geneva location would still be operational for whatever they do there now. Nardozzi stated that is correct. He then stated again, for the record, it's been stated extremely well and noted by multiple attorneys the existing owner, and potential new owners what will happen at the property. He would task the individuals on the Board to base your decision based on the information that has been provided. Not drive-throughs of where they currently occupy. Because if they did that, they would have to go to eleven (11) sites in three counties. He continued to say we are specifically talking about what will take place here and what's proposed to take place on this property. Anything outside of that is a stretch, and he believes he indicated that in the initial zoom meeting. The term stretch was specifically said. Let's see how the Nardozzi's, within the proposal, fits into the Rice Road property. Babcock stated if we wanted to approve a variance tonight and we wanted to limit the amount of truck traffic on the road we might say there will be no tri-axle's or no dump trucks. We might say there can only be service trucks or it might just be pickup trucks. Or we don't want you using an 18-wheeler with a lowboy with sixty thousand (60,000) pounds of equipment operating on a local road. He is asking as Nardozzi is somewhat broad when talking about trucks. They state in their general use paper: *that trucks are all monitored by live GPS. Their origin, route, destination and speed as well as a driver. This GPS data is reviewed as far as our commitment plan to work safe, live safe. We boast an EMR below 1. The vehicles are currently registered inspected per NYS DOT requirements. Service technician makes general repairs to equipment on site out of service truck.* Babcock stated he does not believe that necessarily a truck terminal was ever discussed. Babcock stated if there is any thought of the Nardozzi's wanting to do anything that would fit the definition of truck terminal and they don't present it, and they went to grant a variance they could be putting limiting clauses in that may not fit their future business model. If they wanted that stuff, they would need to ask for it now. He also added that whatever Spelman may or may not have done on this property the ZBA is not always aware of those things. So, don't just assume that we know what Spelman was doing with his trucks and when he was doing it. There may be limits to what the Nardozzi's could do in considering this use variance. The motion could include things that would limit their ability for that portion of their business. Nardozzi stated that Garlapow has asked on two occasions if we could read what the variance specifically request, and what they asked for. Nardozzi stated that he is not going to talk about all the businesses he has, this is not the platform for what they may or may not do. He stated we are specifically talking about what we discussed in the variance application that will take place at this physical location.

Garlapow stated she thinks the reason we just told everybody they weren't permitting it under the existing variance is because the addition of outdoor storage and repair of equipment. So, she asked if the Board is looking at a use variance to permit what the Nardozzi's are proposing on the record and also outdoor storage and repair of equipment? She is trying to understand the scope of the use variance that they are deliberating on. **J. Murray** spoke up and stated before you can even do that, don't you have to have Spelman meet the criteria to even have a use variance. Then you can determine what kind of variance it is. She asked, if they were jumping the gun a little bit? Babcock stated the reason he's trying to do this is because the public hearing is open right now. Once the public hearing is closed, were done gathering information. Also, truck traffic was a concern of the public. If truck traffic somehow needs to be mitigated, we need to know what kind of truck traffic it is. He stated we need to know what's to be expected.

In a year from now if you see thirty (30) dump trucks starting up at 5:30 am and they get all plugged in and their getting their batteries and their glow plugs warmed up, and their idling in the parking lot before they go anywhere. And then they all take off at various times with thirty (30) dump trucks coming back in to park at 4:30/5 PM and all we authorized was outdoor storage of construction equipment, we would be doing a disservice as a ZBA. Murray agreed, but stated that Spelman first has to qualify for a variance. **Robinson** asked if he could speak to help facilitate this inquiry. He read from a letter from Shur, *Nardozzi would keep trucks at the property, like the current owners, Nardozzi would have trucks going to and from the property they would leave at approximately 6 AM and return approximately 5 PM*, He thinks it's a very valid question to ask. He then stated, what kind of trucks, how many trucks, and where they're going? Refermat stated there is no better time than now Chairman as Nardozzi is here. Babcock stated he appreciates that Nardozzi does not have his attorney here with him. Nardozzi may not feel comfortable answering questions, and he does not have to, if he'd rather, we can defer this to a later point. Nardozzi stated he could provide them with the exact answers he already gave them. He stated there is other information on the record that talks about the trucks going in and out that are similar to Spelman's operation. We have talked about it for almost 3 months now specifically about the operation, about the kinds of trucks that came in and out of the property, it's on the record. He stated the Board specifically said that things previously stated do not need to be restated. Torpey said she does recall at the very first meeting asking how many trucks, what the volume would be coming in and out and there was no clear answer to that. It was the type of trucks that were listed, not the volume and frequency and the hours of operation. He asked if that is a statement or question? She said it's a statement, but followed by a question. Would you care to elaborate now on how many trucks, what the hours of the operation would be, how many days per week, and what kind of trucks. Nardozzi answered the majority of the question is on the record. Torpey said she disagrees, there is nothing in the documents that state how many trucks would be coming to and from the property and what hours of the day or evening. Nardozzi's said the Board should refer to the information that is on the record. He does not have that with him. Refermat suggested the record be kept open; he can appreciate Shur is not here. He doesn't have it tonight, but he can gather that information. Babcock stated that if that's something we need down the road; we could come back to it at that time. **Talbot** stated they have 11 locations. There's a lot of traffic with industrial business.

Babcock asked the board if they had any other questions regarding truck usage. Thorn stated he thinks it's an incredibly valid question given the fact the use variance that is currently on the property has two (2) trucks, maybe going up to five (5) pick up type trucks. He then stated that was what the original expectation was for the property in 1997, and it didn't get asked anywhere after that. He thinks it's highly appropriate to ask now. Thorn agreed with Torpey in that he has never heard the number quantified by type of trucks that will be used, and how many trips in and out on a daily basis. Therefore, it is a valid question. Nardozzi asked if the Code Enforcement Officer was still on the phone. Kier stated he is. Nardozzi asked specifically for commercial uses and Ag uses, is there a limit on number of trucks or type of trucks that can be used to facilitate the businesses from an ancillary perspective? Kier said he does not believe there is anything in the code that talks about how many trucks, unless someone had a specific use variance that limited trucks. From a general code perspective, he is not sure there's anything in the code that talks about a specific number of farm vehicles or a specific number of trucks. Nardozzi stated if there were a specific property that got deliveries with a fifty (50) foot long trailer multiple times of the day to facilitate their business operations or on their farm no one could say expressively, you can't have x because were telling you that you can't. Because in that case, you would be overstepping the boundaries and you would be controlling that business. That is his understanding. Kier stated that generally speaking, he agrees with what Nardozzi is saying. He will say that when a business is proposing to come into a district, they go for site plan approval and these types of questions get asked. But, but there's nothing in the codebook that limits the number of trucks that he is aware of. He asked Rayburn to correct him if he is wrong, but he does not believe that the code says how many trucks can come in and out of a particular use of a business. Rayburn stated there's nothing in the code for a specific amount. However, she doesn't feel they needed to put that in there because those businesses are located in the district that they are allowed in. Town Attorney Levitt stated that that is true, there is no limit for a permitted use, but the Board can put reasonable conditions for a use variance because it's not a permitted use in that district. Thorn stated that Nardozzi is stating there are no limits, but the Board can put limits on a variance. They would like to know what the number is that they could grant for this use as they could say that they only want ten (10) of this type of vehicle. That's the difference between a use variance and something that is already industrial. Garlapow stated we did not deny the current use of the existing use variance based on trucking. We denied it on the storage of vehicles outside and repair of a vehicles correct? Levitt stated we didn't deny

anything we simply said that the current request is not within the scope of the existing commercial use variance. She stated we denied the use of the current use variance. Levitt stated again, no you did not deny the use variance application. Garlapow stated they denied the use of the current commercial use variance for the proposed Nardozzi's use. **Refermat** stated it was an interpretive question, that's what they interpreted four to one (4/1) he believes that is what she is saying. They made an interpretation and the interpretation was premised on outdoor storage and repairs it had nothing to do with trucks, numbers of trucks and what type of trucks. Many people tried speaking at once. Thorn stated we can ask for that information. Garlapow stated that she thinks the request for the trucking information is fair and should be provided, but she also thinks that use has gone on and been permitted and it's even in the minutes of the various Board meeting minutes throughout the year. It has been permitted tacitly and explicitly under the existing commercial use variance and we knew about it. Torpey stated she would not say that they knew about it. Garlapow stated that the zoning board minutes reflect the loading and unloading of trucks over the years, it's in the minutes. Torpey stated as Thorn mentioned there was a maximum of two (2) construction types trucks and ten (10) pickup trucks of normal class, she thinks it's highly valid to ask. Garlapow stated there were big trucks unloading and loading of things that were manufactured there, such as cabinets. Thorn stated just because it was done in the past doesn't mean we can't pose different restrictions on a new use variance. We need that information and it's a valid question for the new use variance. Garlapow stated they said the new use variance should be based solely on the outdoor storage of equipment, and Thorn said no, we did not say that. **B. Murray** spoke up and stated it was done illegally, Babcock stated if the public wants to say something, please make sure the Board knows who it is, and please wait until they call on them. **Talbot** requested to speak. He resides on Rice Road next door to Spelman. He stated there is all this talk of trucks, it's such as general word. He sees his business/trucks go up and down the road. He has six-wheel trucks and four-wheel trucks. Class C trucks for his business. He doesn't think that Spelman ever owned anything heavier than that. Spelman had deliveries, but he did not personally own a fleet of heavy equipment. Spelman's trucks were smaller trucks like anyone in the room could own. Now we are talking outdoor storage, and they are talking about heavy trucks, it's a big difference. Nardozzi has heavy equipment that is two or three (2/3) steps above what a residential person has. Some farmers have them, but they have to abide by the agricultural law. What trucks are they going to bring? If he said he only has two (2) trucks and that all he's bringing, and that's all he will ever have there, it probably wouldn't be a big deal. But nothing has been stated about what type of trucks, or how many. He thinks the tractor trailer deliveries were around one a day, sometimes one a week. Spelman did not personally own the delivery trucks. This owner has a lot of other equipment. He's got eleven (11) sites and 4, 5, or 6 different businesses. It's a greater scale. The public is concerned about the scale. If the Nardozzi's had a small business like Spelman, it probably wouldn't be a big deal.

Torpey stated she would reference back to the zoning code. Under General Industrial it specifies heavy construction vehicles storage and repair is not light vehicle storage and repairs, its heavy construction. And that's what we're establishing here. **Talbot** stated Nardozzi has to be specific for the trucks, he himself owns trucks, but nothing like the Nardozzi's are going to bring in here. **Refermat** stated this is information that can be secured. Babcock stated we will come back to that if and when we need it. He then spoke to Nardozzi. He wanted to ask a couple more questions regarding the proposed general use that the Board received yesterday from the Nardozzi's. He just wanted to verify that they are looking to have outdoor storage of construction equipment. Nardozzi said yes that's correct, within the confines of the documents that were provided to you prior. Babcock then asked, and you are looking to repair the construction equipment on the property. Nardozzi stated under the understanding that it is required for the business and within the building that was approved by the Planning Board. Babcock stated they are not saying that the Nardozzi's would operate a construction repair business specifically open to the public. But that they would be repairing construction equipment or servicing it on this property. Nardozzi stated occasionally. He stated they described in great detail their repair schedules and that it is logistically and typically taking place offsite on the job sites where the work takes place. Garlapow wanted to follow up on that, she asked Nardozzi to talk about the outdoor storage, where they envision it, and what items would be stored outside. Nardozzi stated that one of the reasons why the Spelman property was appealing to them is because some of their locations don't have the high-quality level of buildings and warehouse space that the Spelman property does. A lot of the material on some of their smaller sites has to be laid down and can't be installed undercover. The space's do not physically allow for it. The Spelman property specifically has the ability to highly organize their operation. Where the vast majority of those parts and pieces would be installed inside the existing buildings. The addition requested, that was approved by the Planning Board, was specifically required for the occasional use of repairing equipment. Along with that, is specific outside storage. It should be duly noted that it's the exact concept that Spelman has now, of courtyard

fashion. We plan to move that structure and it would actually be positioned behind the new building, closest to the residential home that the Nardozzi family would be occupying. Within that area is where they would have lay down space. It should also be duly noted that it would not be visible to anyone or anything as it will be behind an existing ten (10) foot fence, that they will be changing the configuration of. Garlapow asked what type of things and material would actually be stored outside. Nardozzi stated that if there was something that came in that needed repair that could not be done on a job site, it would be stored outside while it's waiting to get into the shop. If they were getting ready to do a project and they had to have a specific mechanical component such as a large valve assembly, and whatever that may entail, that might get dropped off from Maynard's or UPS and be outside. The variety of parts and pieces will be inside the warehouse. They want to piggy back off what Spelman has already done, in a similar fashion and keep things very neat. He stated there is space and buildings and infrastructure in order to do that. He then went on to say that one of the things that Rayburn and the Code Enforcement Officer had identified right off the bat when this discussion got started back in December or January was that the outdoor storage wasn't permitted, so they feel they went to great lengths to mask that and make it so it would bode well with the decision makers. **C. Dehn** asked what the lay down material would be, Nardozzi stated that he just described it. Torpey then spoke and stated the large valve assembly, is that what she is questioning. Nardozzi stated valve assembly type components. Garlapow stated most of it would be inside correct? Nardozzi stated the vast majority of it. If they had a shipment coming and it was going to be dropped shipped before going to a jobsite, then the outdoor courtyard is where it would be held, just like it is right now for Spelman. Torpey stated that is where you would deposit any surplus valve assembly material correct? Nardozzi stated that's not what he said. He said if the product was waiting to go out to a job that's where it would be. **J. Murray** asked Nardozzi what type of piping he was talking about, Nardozzi stated it could be plastic pipe, domestic water pipe, it could be a variety of pipe and it changes from year to year. He then stated some years they put in a lot of agricultural piping.

Garlapow stated that the original meeting was scheduled from 7:30-9:30 and stated that clearly, they are not going to get through the review of the four (4) criteria. She asked if it would be fair to think about perhaps adjourning. Babcock stated it could be, she stated Nardozzi was going to come back with some more information. Babcock asked Nardozzi if he felt like he needed to bring back additional information. Nardozzi stated he was requested by the Board members to provide specific information. Spelman's Attorney spoke on his behalf and if specific information is requested, he very well could provide that. He then asked if that would help the Board specifically do their job? Babcock stated that during a public hearing portion is where they do their fact finding. Typically, we want to provide the opportunity for the applicant to provide those answers if they need to, without needing to close the public hearing and then reopen it again. Nardozzi stated that the application came from Spelman he would refer to his council or Spelman himself to answer that question directly. Nardozzi stated that it has been a long process. We have been talking in great detail about it. He stated he thinks everyone has a formulated opinion at this point. There has been a lot of information shared, so he guesses that question should be directed toward the applicant. **Refermat** stated with respect of the trucks, if there is a question from the Board on that his intention would be to get them the information. If we are going to end for the night, he requests the record would be kept open. He also stated that frankly if there is any other information that the Board could think of that it wants right now, he would like to know that so he can try to do this as efficiently as possible. Babcock stated he just wanted to provide everybody the opportunity to ask any questions they had of the applicant before they started any deliberation. Garlapow then stated that they still need to clarify the scope of what this use variance is for.

Babcock asked her if she wants to just quickly look at that. We can do that with the public hearing being open. Garlapow stated yes, that's fine. The Board took time to look at the application again. Babcock stated if we look back at the record of what has already been discussed in the previous meeting minutes, it's a use variance for Nardozzi's company of whether his proposed use, as given to us with this record of everything that we have taken in from Shur's submittal to the one received yesterday to the submittals and notes that were given to the planning Board that we are looking to approve Nardozzi the ability for him to have his paving and construction business on the this property. Babcock asked what the official name of his company is. Nardozzi stated there is a variety of them which one do you want? Do you want the agricultural one? Babcock stated which one does he want to use and you are applying to use there. Nardozzi answered Nardozzi paving and construction is what's on the letterhead. Babcock stated that they understand its stated that asphalt materials won't be processed and stored on the site. If that is the official DBA of the company that you want to have here, Nardozzi paving and construction, LLC

to be able to operate and use the property. Nardoizzi stated he doesn't store paving and materials on any of his sites. He wanted to drive that point home as there are a lot of worries about that, and he wouldn't want everyone to worry about nothing. **Spelman** agreed with that also, so much of the process has been drawn on through the distribution of false information among the neighbors that he hasn't paid taxes in twenty years, and poor Jim can't get 1.5 Million for his place, and there will be asphalt there. When he spoke with Ken Dehn, he was under the impression that this would go all the way up through the agricultural/residential parcel to Brace Rd. That's not the case, so that is why he is very interested in working with Jim Nardoizzi to facilitate information so that you are able to understand this clearly. Time and time through we hear industrial, industrial. They do industrial work, but they are not going to do it on Rice Rd. Every Exxon mobile field office doesn't have an oil well in their back yard. Babcock acknowledged that. Spelman stated he feels that very important and make sure everyone is comfortable with that. He understands everyone a little but frustrated, he shares in that himself, but the misinformation that's been circulated particularly through the community on this from the get go has got to be corrected. The record has got to be set straight. He went on to say when one drives down Rice Rd. in the future with the Nardoizzi's owning his property we will notice a black awning on the front of the building instead of a green one, you will notice more trees in the back and you will probably see an overhead door if you stop and look down the driveway to look back towards his house. Again, no need to reiterate hours and trucks and so on and so forth. He stated they sure ran a lot of traffic through there in twenty-three (23) years. He is happy to get more information so that everyone is satisfied and they get what is needed to make decisions. He stated he is deeply bothered by the mis-information that has been circulated around through these series of meetings and even out in the community beyond. He would like to see that gets straightened out. Babcock stated this is his opportunity if he has more, he wants to add. Spelman stated again, he thinks they need to get more information per the County's recommendation the scope, specific details of the intent of the property is what was submitted here earlier on the Nardoizzi letter head, that was a request the County Planning Board had. And more information on their vehicles. Thorn stated he feels some of it is important to make sure that they remove some of the ambiguity because he thinks that is where some of the mis-information has come from. He personally, since they are looking for more information on the trucks, would want specifics on the trucks. He would want to know the maximum number of trips per day, maximum number of repairs coming in or going out per day. All of those are affecting traffic on the road, and that is one of the concerns that they have heard from the public. He would want to know the specifics on all that, so its not happening all willy-nilly. Spelman stated that they will do their best to get that information to the Board, but keep in mind economies and things change overtime. The Nardoizzi's would be required to come back to the Town with any changes they wanted to make, just as he had done multiple times over the years. Thorn stated that he's looking at the cap of where they would be able to approve something and then it would work with the same process down the road. Spelman stated that he respects that. His point is when he first started in East Bloomfield, they had eight employees, and things went pretty good as far as the business growing and all that. The Town was involved in each of those steps and he is sure if Nardoizzi choose to grow the size of his business he would be right back in front of the town. There are annual fire inspections that are done by the Code Officer. There are plenty of chances to tour the property, keep it maintained and also the neighbors keep an eye on things too. He respects that, he is a neighbor as well. **Nardoizzi** then stated that he mis-spoke when Babcock asked a technical question. He would like to give a technical answer. Nardoizzi holdings is actually purchasing the property with Nardoizzi paving and construction being the primary occupant of the property. Nardoizzi holdings owns everything from an engineering company to all the way to agriculture. He then stated they are all registered in NYS. Babcock stated that Jim Spelman referred the Nardoizzi's to the Board for a use variance and he told us that he felt it was because chiefly the outdoor storage, and we know that you want to have construction equipment. What the Board looks at as a tool to help them is to look at and decide what use do you fit in under our code. Not that your looking to have a re-zoning of the property, but if you were here, what would it be. And is it something very similar to what was approved before? Or is it maybe something different than what was approved on the original variance. Babcock stated that there is also what they consider a commercial definition of a commercial variance and that is where there is a tripping point. Because there is a commercial district in our code. That district allows certain things. Its easy to see where maybe the 1997 discussion points of that variance were allowable with the Commercial Code. Its hard to go back in time to see exactly what they may have meant, but this Board made the determination that the Nardoizzi use did not meet the definition of the use back then. The Code Enforcement Officer was valid in requesting the Nardoizzi's come to the Board for a new use variance. He then stated so now, we will look at all your uses and what you're going to do to this property. They took the main points following up on the outdoor storage, as you're going to have construction equipment.

And you're also going to want to repair that equipment. Whether it's one (1) day of the year, ten (10) days of the year three (3) days of the year or three hundred and sixty-five (365) days of the year. Again, you want to intensify the use beyond what was originally applied for in the 1997 use variance. Those intensifications of use, the Board needs to look at and find where do they fit if they were allowable. What the Board determined when they were polled at the first WebEx meeting was that those would be allowed in a general industrial use. That does not mean that the Board will give you a variance to do anything in the General Industrial District on the site if you are successful. He then stated that is where we need to flush this out, and they have done a lot of it. And he appreciates Nardozzi answering the questions that we posed to him. He stated it is going on ten (10) o'clock and he hates to say that this might have to go to another date. **Nardozzi** stated that respectfully in the waste of time and money can we hold a potential earlier meeting other than another thirty (30) days? Nardozzi did ask three (3) questions ago that the actual document that was submitted for their use to be read aloud. As they did talk about specific points. He stated we have been going around and around about specific things that are allowed and that's hearsay, he understands everyone has a voice, but what he is trying to achieve is, is the Nardozzi family and business going to be a part of the community in fashion A, B or not at all. That is a respectful request that your tasked with. **Levitt** wanted to jump in, he stated procedurally, so that we do not have to come back here fifteen more times while they are on the record, is there any more information that the Board needs from Spelman or Refermat to answer the four (4) points of whether or not Spelman qualifies for a use variance. He stated we need to put the horse before the cart. The horse is whether Spelman qualifies, and the cart is Nardozzi's Company and how we craft that part to fit into this variance if he qualifies for it. Are there any questions for Spelman or Refermat or information you need to answer those (4) points?

Garlapow stated not as long as we are limiting the use variance to outdoor storage. She was not done speaking when Levitt tried to correct her, and there were many people making comments. Levitt stated the inquiry is whether Spelman qualifies right now for a use variance. It has nothing to do with Nardozzi's business. Does Spelman qualify for a use variance? There are (4) questions that need to be answered by Spelman and his Attorney. If he qualifies, you can craft a variance for Nardozzi's uses. He again stated we need to know if the Board needs more information from Spelman or his Attorney. If you have questions for them that they have not provided that's not in the record, we can come back next time and open the public hearing again.

Babcock asked Refermat if he believes that everything that he provided to them is your final answer on what you are going to provide in terms of answering the four (4) use variance test? **Refermat** stated that the answer to that is no, for example there has been a request from the Board for information on trucks that he is going to get and he can not tell him there will not be anything else. Because they are trying to be helpful, and get all relevant evidence before the ZBA. There will be more information. Babcock questioned if they feel there is more information pertaining to the application, that Spelman initially supplied without Refermat's representation? And then the follow up referral of material that was supplied to them in answer to his previous application. He asked if there will be more information or just the truck information? Refermat stated that he does not know the answer to that, there may be more information. Refermat asked is there a reason for the question? Babcock then asked Refermat if there was any reason why they would want to withdraw their application tonight. Babcock stated he would like to remind them they always have that opportunity to withdraw the application at any time. Refermat answered no. Babcock acknowledged that answer. Babcock stated that so it's clear, the applicant would like to extend the meeting to whenever the Board typically would be meeting next which would be the fourth (4) Wednesday in September. Refermat asked a hypothetical. He asked if he stated that they did not have anything else would the Board vote tonight on the use variance? Babcock stated he does not know; they would have to determine that as a Board. Babcock asked if he wanted to poll the Board himself, he could ask them. Refermat stated he was just trying to answer the question. He can not sit there and say there will be no more evidence put into the record. He then stated that Robinson, as he found out tonight put a bunch of evidence into the record last week. They do wish to conclude this as soon as possible; we all agree on that. It would be nice to hasten the next meeting if we could, but he can tell them any information that they put in will not delay anything. He doesn't understand the question, he has told the Board that their maybe more information provided, is that not enough of an answer to answer the question?

Babcock then stated if the Board decided to close the public hearing tonight, we would be done gathering information. And if you had further information, we would have to advertise or re-open the public hearing at a



later date, which we would rather not do. Refermat stated that his understanding was that the record would remain open. Babcock stated if we continue.

**Levitt** again stated that procedurally is there any specific information that is needed to answer the four (4) questions for a use variance? Babcock asked Refermat if he had anything else to add regarding the application regarding the four (4) questions. Refermat asked at this time? and Babcock stated anytime. Refermat stated not tonight. Babcock stated that this is not an open-ended thing where we just keep the meeting open until maybe you come up with some more stuff in the next month. Refermat stated that Levitt is asking the right question, as long as he is getting the truck information is there anything else. In fact, he asked the question about an hour ago is there else that the Board would like because he would have it ready for them whenever the next meeting is. Levitt stated he will clarify what he is asking. Unless Refermat or Spelman have anything to add or any of the other parties here have anything to add, the only thing stopping us from closing the public hearing tonight is if the Board members need more information about those four (4) factors. Otherwise the public hearing can conclude and you can continue and deliberate. That's assuming you have all of the necessary information from Nardozzi as well. Refermat stated that he is opposed to that. He does not feel like the record should be closed right now.

Babcock acknowledged Refermat's comment on being opposed to closing the record at this time. Babcock asked Robinson if he had something that he wanted to add. Robinson just wanted to clarify with the four (4) factors that 1,2 and 4 clearly apply to Spelman, the third one the essential character of the neighborhood is more for the proposed use and we need more information from Nardozzi, it does go beyond the information that you would get from Spelman. Babcock asked for Levitt's opinion. Levitt stated if the Board needs more information to make a decision then keep it open and let everyone be heard. If the Board has all the information, they need then a decision can be made.

Garlapow then asked even if they run through the four (4) elements for the decision, if that decision turns out to be that they are considering granting a use variance, wouldn't we want the public meeting open, because in her understanding that's the point in which they clarify the parameters in which they would issue a use variance. She then stated wouldn't they want the public meeting open to perhaps glean clarification on specific questions. Babcock stated he believes she is correct and asked the Board for their thoughts. Rayburn stated she thought the public hearing is closed when they make their deliberations so there are no questions during that time. Levitt, then stated that they are fact gathering right now, the Board has the concerns of the public. Presumably you would know what limitations would be necessary to protect the character of the neighborhood and to protect their expectations as land owners. If you have more questions about the character of the neighborhood, which is the third point. If you have more questions and how to preserve it if hypothetically you do grant a variance, ask while the record is open. Thorn stated he does not see the Board having the public session open while they are imposing those limitations. Levitt agreed. Thorn stated that's not the way we've done it. We close the public hearing we deliberate and impose any restrictions at that time., Torpey also agreed.

Garlapow stated that she has read other use variances in other un-related cases that are very explicit. Such as this is a use variance to build a red barn on the corner of this street and it runs through these very specific requirements and she thinks even at a general level and not understanding what use variance were looking at, we have thrown around the word industrial and she does not think they are contemplating an industrial use variance use here. She thinks they are contemplating very limited expanded use. That the Board just denied in the interpretation. Rayburn stated they did not deny anything in the interpretation. You decided it did not fit in with the existing commercial use variance. Garlapow then stated so, they had to look to a new use variance for new uses and two of which, which we stated where outdoor storage and repair of equipment. That's the basis on why it didn't fit into the existing variance. Thorn stated with a new use variance you get to impose whatever conditions you want on it, not just those two (2). It is a new use variance they need to evaluate what the neighbors have said as well. Garlapow stated that the existing variance will still be there, as it runs with the land. Babcock agreed. She feels the outdoor storage and repair and storage of equipment should be the only item they are reviewing. Thorn stated again, that does not mean you cannot impose new conditions on the new use variance. Garlapow stated that she agrees.

Babcock stated to Garlapow he does not know if she is looking for an exact two-line sentence of what they are

reviewing. He stated he thinks he tried to qualify it, as we are reviewing it as what the Nardozzi business uses are that will be done on this property. Two of the things that he is definitely proposing were the outdoor storage of construction equipment and repair of construction equipment. Babcock then stated on those two alone that's what you're looking at, but they need to flush out the other uses. He then repeated her question, is this an industrial use proposed in an AR-2 district? He stated he believed that the Board all agreed at the first meeting that yes, he was proposing an industrial use in an AR-2 District. Garlapow agreed. Torpey stated that it sounded to her that Garlapow was bringing up if we need more input from the general community under the hypothetical that they do approve a use variance. If they did approve a use variance with restrictions is there more input that the community would give. Garlapow stated it was a question, yes.

Torpey stated if that's the case and the community wanted to think about a hypothetical, Babcock then stated no, that is not part of the Board's deliberations. He stated we have taken their concerns and we can apply those whenever they need to be, if there was a variance to be granted. Then we would mitigate and supply the least variance necessary. Babcock then went on to say just because they say they want outdoor storage of construction equipment and repair of construction equipment, that may not be the only things that qualify as an industrial use. The other industrial uses that he does throughout his businesses, that he proposes on this property, also do not necessarily fit. He believes they have pressed and tried to flush out everything he's going to do there. Then he stated we didn't ask him necessarily what kind of toxic substances will be situated or stored on the property. We didn't ask him what kind of materials, or safety data sheets they have to load into their trucks because he may be hauling this stuff from the site to the construction sites. Babcock stated that they kind of need to be aware of those other things. If the Board just says that the use variance is just Nardozzi paving and Construction, LLC he thinks that's enough to define what they are doing. The other thing is realizing those are industrial uses that were proposed per Town Code. Rayburn asked if she could speak, she said to Babcock correct me if I am wrong. He stated he would. She then stated that a use variance is supposed to be very specific to a use. The last time a use variance was approved it may have been too broad. You're not supposed to give a commercial use variance where you can do any thing commercial that is listed in the commercial district. You would give a use variance for a specific use. This use, you can not now just change it to another use. It has to be for that specific use. That was not done, it was granted a commercial use variance. **C. Dehn** then stated that the use that Spelman was granted in 1997 is way different than what it is now, due to the growth of his company. She added congratulations to him, but it has evolved beyond the 1997 use. And now we are looking at an industrial use. She stated that now we are just saying the character of the neighborhood really doesn't matter, we are going to let it continue to change, and we are going to make it worse with industrial equipment. And by the way is an environmental study going to happen when all of those toxic materials are possibly stored? Babcock spoke up and stated nobody said there was going to be toxic materials, she then stated no, but that is a concern of theirs. Look at the expansion of Spelman's company. Then there were many people talking at once. Babcock then interrupted and asked for order, he asked that one person speak at a time. **C. Dehn** then went on to say they all have well water that they are concerned about. Then **T. Talbot** spoke. He stated that Board keeps referring to him, he asked if Spelman is applying for the variance who is him? Who will actually be living there and who will own the property? It's a family business so, he knows that Nardozzi is the one doing all the speaking. Talbot spoke directly to the Nardozzi brothers James will live in the house, but Michael was doing the talking. He stated that they both own Nardozzi holdings. Talbot stated if there was a question who would the Code Officer be speaking with. He stated it's kind of confusing as Spelman is applying for something that someone else is going to use. Both brothers would own the property, James Nardozzi will live in the house.

**Nardozzi** stated that he thinks the Board is saying in order for one of the tests, that has to happen for the variance. More information is needed or may be required of what will actually happen on the property for the determination. The question was, is there anything needed for that. He stated he thinks everyone knows the property is residential and commercial. He then corrected himself, it has a commercial variance and ag. There are two different parcels. Babcock then went on to clarify that point. Spelman has a residential parcel that is directly next and adjacent to his commercial use variance property. Its separate, it might be owned by Spelman but it is separate and it could be sold to somebody else. There is nothing that says that he has to sell it to Nardozzi. There's nothing that says that he can't subdivide it and do whatever is allowable with that parcel. Which is zoned AR-2. He then went on to say they have said that they want to live next door. That is listed again in the last submittal. **C. Dehn** spoke up and said it's irrelevant anyway.

Babcock stated he does not see that being an attachment to anything that was previously approved. **J. Murray** asked what the Board was doing now. Babcock stated that it is now 10:15 pm, and at the request of Refermat, Garlapow interrupted and stated she has one last question. She asked how many acres would the new use variance apply to? Babcock and Spelman stated it was about seven (7) acres. She then asked where does that come from, Babcock stated that is the size of the parcel. She thought this was a forty-one-acre parcel. The answer is no, the residential parcel is approximately forty-two (42) acres. She then stated the commercial use variance would impact seven (7) acres, and Babcock stated it would. Babcock then went on to speak to Garlapow and stated he would feel better if she could tell him that she understands what the definition of what this use variance is. Did they answer her question of what the use variance is that they are considering? Garlapow stated in her mind the Board is looking at a use variance on seven (7) acres for all the uses the Nardozzi's submitted and in particular outdoor storage and repair of equipment. **J. Murray** then spoke up and stated after you review the four (4) criteria. Garlapow agreed. Babcock stated that he thinks they all agree this is a more intensive use. Garlapow stated that she thinks what they have not gone into is whereas the previous use variance was a commercial use variance, what this use variance is, she does not see it as industrial. Babcock stated that's why they have read over and over again from the General Industrial District of where those permitted uses would be in our town, just as a test. For them to feel out where would that type of use be allowed per our code. Also, he thinks they were trying to get their heads around is it a more intense use than what was previously allowed. Even though there is a commercial use variance on the property its still located in an AR-2 District. The use that's being asked for Nardozzi's business is in an AR-2 ag/residential district and there are things that are in conflict with his proposed use because its in this district. Garlapow then discussed the other two items that were denied. Babcock stated that again, she keeps saying denied. She stated they denied them using the current commercial use variance for the purposes the nardozzi's proposed because of outdoor storage and repair of equipment. So, in her mind that's what the Board is looking at. Those are the reasons it didn't work under the current use variance. Its what we just said explicitly. Babcock stated that is what the Code Officer (Jim) identified as being his reasons and we agreed with that. Babcock agreed that it supplemented the motion. **Refermat** does not see what's wrong with the word denial. Maybe it's how its phrased it. This Board voted and said its not within the existing use variance. So that is a denial of the request for the interpretation, that the proposed uses do not fit in with the current use variance. He stated if it hadn't been denied then we would have been out of here two hours ago with approval. Babcock stated he does not want anyone to think that they denied a use variance. Refermat and Garlapow both agreed that didn't happen.

Babcock then stated that he feels they might be able to close the public hearing tonight and take up the four (4) tests but, we err on the side of the public to have their say. He thinks they have done that consistently. Then he said even if we did look at the four (4) use tests now we would not be out of here until midnight. He suggested that they close the meeting tonight and offer Refermat his additional fact submittal if he wants to and eluded to. We can continue this meeting at a later date. He asked if anyone else had and further input or arguments against that. Babcock stated they would continue the already published public hearing and continue on at the next scheduled public meeting. They will determine now if anyone on the Board wants to have a special meeting or not. Babcock stated that Refermat has already previously suggested that he would love to have them hold another special meeting. He himself feels that they have had at least two (2) and they publish their regular scheduled meetings at the beginning of the year in January and their will be other anticipated Board matters at the next meeting, whenever that is. Rayburn stated yes there will be. If they had a special meeting there could end up being two (2) meetings in September. The other thing he would mention is that if it helps anybody to hold a meeting at an earlier time, it may afford us the ability to get through everything we need to get through at the next meeting. Babcock then made a motion to hold the next meeting at the regular scheduled date of 9/23/2020 but at an earlier time of 7 pm. Thorn seconded the motion. All Board members voted aye; vote was carried unanimously. Babcock made a motion and Crocker seconded the motion to adjourn 10:25 pm.

Respectfully submitted,

Kimberly Rayburn, Planning & Zoning Board Secretary