

TOWN OF EAST BLOOMFIELD

Zoning Board of Appeals September 23, 2020

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

Absent:

Others Present: Kim Rayburn (Secretary), Heinz & Michelle Jungermann (Applicant)

Babcock opened the meeting@ 7:30 pm, A discussion was held and it was discovered that the applicant did not receive the neighbor letters and the “property under review” sign was not posted. Therefore, a decision can’t be made at this time. Babcock stated that they can keep the public hearing open and review the application tonight and again at the next meeting.

Babcock waived the reading of the Public Hearing notice; and the Public Hearing was opened.

I. 7:30 pm TV6-20 Area Variance Heinz and Michelle Jungermann 3049 Bailey Rd. tax map # 80.00-2-4.120 side yard setback variance for a shed. They are asking the Board to allow them to place the shed 4 ft from the property line where 25 feet is required. Also, a front yard setback as they cannot meet the 75 ft requirement. Their lot is preexisting non-conforming of 1.1 acres where 2 acres are currently required.

Babcock asked the Jungermann’s to explain their proposal. Michelle Jungermann explained that they had the shed given to them by a friend. They placed it in an inconspicuous location on their lot, nestled in between two trees and matched it to their house. It will be used for motorcycles and three wheelers to get them under cover. They have a one (1) acre lot and the setbacks are for a two (2) acre lot. Keeping the setbacks would be very difficult, and placing the shed in the middle of their property would be less appealing. The property also slopes up from the road. They feel this is the best location for the property and their needs. They have spoke to the neighbor to the North and he is ok with the placement of the shed. Torpey stated that the placement has added to the buffer to the neighbor to the North. Jungermann stated placing the shed further back on the lot would be difficult as there is a tree line continuing up the property and it slopes upward. Torpey stated that it’s not a permanent structure, its on a gravel pad and it can be moved if needed. Thorn asked if the shed at the top back of the property was there when they purchased the property? Jungermann stated it was not, Woodruff allowed them to have the shed in its current location but if ever became an issue with the neighbor it would need to be moved as it’s not a permanent structure. The neighbor also has a shed that is very close to the lot line, if not on Jungermann’s property. Jungermann stated that when they purchased the property, they did not know that the minimum acreage should be two (2) acres. Babcock stated that back in 1988 the zoning was low density residential and the subdivision regulations at that time when this lot was created were 1-acre minimum lots with a front setback of forty (40) feet and twenty (20) feet for the rear and side lot lines. Rayburn asked if that was for the principal or accessory structures. It was assumed it was for the principal structures. After 1988 they did away with the low-density district. Rabbit Run has the same issues, every time someone wants to build or add onto, they need a variance. These are unintended consequences. Babcock stated that the Jungermann’s had the same issue when they added a garage onto their house there was no way they could meet the side setback requirements but they did hold the front line. A discussion was held on the lot coverage, it does not appear to be an issue. Thorn looked at alternatives to a variance, if they put the shed in the back, they would only need one (1) variance. Jungermann stated that due to the rear setback and side setbacks it would be in the middle of the yard. Heinz Jungermann stated that the location is practical and convenient to the location of the driveway. He can now access the shed without having to drive on the grass and mud. Gravel is safer and it also created a turn-around for safety so no one has to back out onto the road from the driveway. A discussion was held on the front setback. The shed location is approximately fifty (50) +/- feet from the right of way where seventy-five (75) feet is required.

Babcock commented on the site plan provided and stated that it's important to know where your property lines are and how much of a variance you are requesting. He commented that when they put on the addition, he recalls them getting measurements by pacing it off from the bushes. He then stated in his line of work those measurements can be off by quite a bit. We have seen guesses by the applicant or the Code Officer by taking a tape measurement off of a pole or the pavement that may or may not be the centerline of the road. When your trying to determine exactly what variance your giving someone going by a tree line may not be accurate. Jungermann stated he did not try to do that. When they put up their addition, they measured off the end of the house. Torpey stated that the placement of the shed appears to be fifty (50) +/- feet from the right of way. Babcock stated that his concern is more with the side setback. Jungermann is telling the Board that the shed is an approximation of being four (4) foot off the side property line. He wants to know how they came about the measurements. Jungermann stated that engineers place power poles on the property line of the property the service is going to, he knows this as he is a lineman.

Babcock stated that the charge of the ZBA is to weigh the five (5) state mandated criteria in request for an area variance. He stated even if the applicant does not meet all the standards it does not preclude them from allowing an area variance. Their charge is to give the minimum variance necessary to achieve the desired result. Jungermann would have to extend his driveway in order to put it in the back yard, and the property slopes upward. They have to look at substantiality and the Jungermann's are restricted due to the zoning change. Babcock stated that the side yard setback may have been ten (10) feet in the low-density district. Even then it would be more than fifty (50) percent, and maybe that would be considered substantial. Babcock asked if it were to be moved closer to the house would it be a big problem, Jungermann stated it would be more of an eyesore and they would lose the turnaround. Currently it is snuggled between two (2) pine trees and its less noticeable. He stated there is a solid row of pine trees the higher up the driveway you go and the shed would be in the middle of the yard if they moved it farther off the line in front of the trees. Babcock then stated that one of the criteria is whether the benefit can be achieved by other means feasible to the applicant. The placement may not always be where the applicant wants it, but where the Board will allow it. He also stated that even though the Planning Board gives a favorable recommendation they are separate Boards with separate functions.

Garlapow asked if the turn around was always there. Jungermann stated it was not, they put it in when the shed was placed. And they felt it was safer for young drivers so they would not be backing out into the road. Thorn stated that they should hold off on deliberation of the five (5) criteria, Babcock agreed and stated the public hearing will remain open. The next regularly scheduled meeting is the fourth (4)th Wednesday of the Month in October. Jungermann stated that if he needs to have a survey, he will get one. Thorn stated Jungermann should supply a statement from the neighbor that they are ok with the placement of the shed so it can be added to the record. Babcock asked the Board to adjourn the public hearing until the next meeting when the neighbors have been notified and the sign has been erected. All Board members present agreed.

II. 7:30 pm Review #TV4-20 Continuance of ongoing meetings 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 Nardoizzi paving and Construction.

Babcock reviewed the letter dated September 21, 2020 from Refermat Hurwitz & Daniel, PLLC. This letter states that their client James Spelman withdraws the request for a use variance. They asked to be removed from the agenda for this meeting. Babcock asked to have the Ontario County Planning Board (OCPB) review from 9/9/2020 added into the record (included) along with all other technical reviews and OCPB meeting minutes. He asked for any further comments, there were none.

See inserts below:

8/11/2020 Staff comments Pg. 16

8/12/2020 OCPB review Pg. 22

9/9/2020 Pg. 16

Thorn made a motion and Crocker seconded the motion to close the public hearing. All Board members present voted aye, Vote was carried unanimously.

| 161 - 2020 | Town of East Bloomfield Zoning Board of Appeals | Class: 2 |
|--------------------|---|----------|
| Referral Type: | Use Variance | |
| Applicant: | Spelman, James | |
| Representative: | Refermat, John | |
| Tax Map No(s): | 54.00-1-16.121 | |
| Brief Description: | Use variance for an industrial use (highway/heavy construction contractor) on a 7.4 acre lot with an existing use variance for a commercial use (cabinet assembly) previously conducted in three existing buildings with a total of 17,400 SF at 6600 Rice Road in the Town of East Bloomfield. https://www.co.ontario.ny.us/DocumentCenter/View/25015/136-20-Aerial-Location https://www.co.ontario.ny.us/DocumentCenter/View/25016/136-20-Aerial-Site | |

This application was previously referred at 136-2020 in August 2020. In reviewing the application, the CPB was aware of not substituting its judgement for that of the East Bloomfield ZBA regarding the sufficiency of submitted information with respect to the four prong use variance test outlined in NYS statute or determining whether the proposed use variance, to allow an Industrial use, would impact local neighborhood character. The Board's only role is assessing whether or not allowing this industrial use or potentially any industrial use, would have a countywide or intermunicipal impact. In that regard, the application included no information on likely traffic associated with the proposed industrial use and therefore the CPB previously voted the application incomplete. Such traffic generation information would be useful, but not necessary, for the CPB to assess whether the use variance to allow this or any industrial use would likely have a negative impact on farm viability due to increased difficulty moving farm equipment from field to field.

The applicant and their team did submit additional information related to the requested use variance to allow this industrial use. The additional information indicates the number of on-site employees will be 15. The information does not provide estimates of the number and type of vehicles that will be entering and exiting the site or whether any business activities will occur outside.

The narrative that follows includes the project description, comments, and board motion from the previous referral.

The applicant is also proposing a 3,200 SF addition to the rear (north) of the largest building. Following construction of the proposed addition, the site will have approximately 2.5 acres of impervious service or 35 % lot coverage.

Area uses include agricultural operations and homes including one with a home daycare. Boughton Park is approximately 3 miles from the site. At the time of the original use variance other businesses uses in the area included a motor vehicle repair garage.

The use variance application materials includes the following documentation regarding granting of the original use variance and expansion of the area of the use variance and buildings.

- Documentation from the time of granting the original use variance indicates the proposed building would resemble a barn with a cupola. The applicant indicated 8 employees operating with 2 vehicles and a potential future business expansion to increase from 2 to 5 vehicles with no projected estimate of employees. Expected deliveries were characterized as 1 per week plus occasional UPS deliveries. The minutes reflect that expansion beyond the scale of a home based business would require another variance. The minutes indicate based on the design of the proposed building in keeping with those around it, the ZBA will pass a resolution to approve a use variance for operation of a commercial business on 2 acres. The actual resolution does not reference the 2 acres.
- Documentation from a 1999 area variance to add 1.5 acres from the applicant's 41 acre holding to the area included in the use variance to accommodate a storage building with no additional employees or traffic. A second storage building appears to have been added in 2001 and in 2002 the driveway was approved to be moved to the west and the commercial area was expanded 200' to the east and 225' to the north with no change to business, traffic, noise, or lighting. Also documentation of some business activity outside typical business hours.
- Documentation included with the request for an industrial use variance/interpretation of whether the desired business operations can be completed under the existing use variance indicates the proposed business would continue to store equipment and materials in the existing and proposed buildings and involve more outdoor storage of equipment than the current use.

Application materials indicate the carrying cost of the property is \$200,000 annually with 75% of the cost attributed to the mortgage. The application also includes a Comparative Market Analysis by Leverage Properties, LLC and an assessment of highest and best use by Bruckner, Tillett, Rossi, Cahill & Associates. The Comparative Market Analysis established the likely value of the property as 1.4 to 1.5 million based on a capitalization rate of 0-11 %. The highest and best use analysis identified office, warehouse, and light manufacturing use as that likely to realize the highest value.

August 2020 Comments

1. The record does not provide documentation of unnecessary hardship with regard to granting of the original use variance. In fact the record indicates the applicant's purchase offer of the property was contingent on granting of the use variance and the record further indicates the applicant chose this property instead of other available locations because appropriately zoned land was cost prohibitive and the business owner would not be allowed to combine a house and business on the same lot.
2. The ZBA record does not clearly outline the scale and intensity of use allowed by the multiple use variance expansions. Was expansion from 8 to 54 employees and related increase in traffic and potentially off-hours operations authorized? If operations exceeded the scale and intensity of use allowed, any consideration of future potential impact on the neighborhood character should be based on the allowed, not actual operations on the site.
3. What is the rate of return of the property at the 1.3 million asking price? What is rate of return for other permitted uses?
4. The applicant has not provided a statement of operations signed by the future owner. Such a statement would help the referring body understand the proposed use and its potential impact on the essential character of the neighborhood. The statement of operations should include information such as hours of operation; type and quantity of vehicles involved and the likely frequency of entering and exiting the site; quantity and turnover of any materials stock piles or other activities that will occur outside of enclosed buildings; and the nature and location of vehicle and equipment maintenance.
5. The Ontario County Agricultural Enhancement Board and Plan have identified increased vehicle traffic on rural roads as a threat to agricultural viability. Increased traffic makes it more difficult and less safe to move farm equipment from field to field when passage on public roads is required.

August 2020 CPB Comments

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1. It is the responsibility of the ZBA not the CPB to determine whether the applicant has documented financial hardship resulting from unique characteristics of the property not from personal actions of the applicant and that the proposed activities associated with the requested use variance won't negatively impact the neighborhood character.
2. Board members generally felt uncomfortable recommending this referral for approval or denial. Though the applicant and various legal representatives assembled a large volume of information, the information provided is not clearly and concisely applied to the 4 prong use variance test. Key operational information needed to assess whether the proposed use falls within the existing use variance (not subject to CPB review) or the impact of the proposed use variance on the neighborhood character and therefore eligibility for a new use variance is lacking.

August 2020 Board Motion: A motion to retain 136-2020 as class 2 and return it to the referring body as incomplete. The applicant has not connected the dots to clearly and concisely show whether the documentation provided substantiates unnecessary hardship with the applicant unable to obtain a reasonable rate of return for any permitted use (including use allowed under the existing variance). Nor has the applicant substantiated that the proposed heavy highway equipment contractor use will not alter the essential character of the neighborhood and the uniqueness of their situation.

Motion made by Marty Avila

Motion seconded by Mike Woodruff

Vote: 15 in favor, 0 opposed, 0 abstentions. **Motion carried.**

September 2020 CPB comment

1. The Town Board should consider whether the existing AR-2 zoning district is appropriate for this property.
2. If the ZBA approves this use variance, conditions should be in place to minimize potential negative impact of the Industrial use variance and this use on ease of movement of agricultural equipment from field to field.

Board Motion: A motion to retain referral 161-2020 as a Class 2 and return it to the local board as incomplete.

Motion made by: Marty Avila. **Motion Withdrawn**

Board Motion: A motion to retain referral 161-2020 as a Class 2 and return it to the local board with a recommendation of disapproval. Roll call vote take to verify Board action.

Motion made by: Steve Groet

Seconded by: Tom Lyon

Vote: 11 in favor, 2 opposed 0 abstentions **Motion carried.**

III. Comprehensive Plan review

Babcock stated that the Comp plan committee is looking for input from the Town Boards. He explained that if there is anything that the Board sees that is reoccurring and may need to be looked at for a change in code, or additions made to the code that were not allowed under the previous plan, now would be the time to make suggestions. He gave the example of repeated request for in-law apartment's 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. Rayburn explained that the Planning Board worked on new aging in place regulations that will be passed soon, which would allow for family members to live in an accessory structure on the same parcel. Babcock stated that he feels that people are looking for the ability to store stuff, they are not adding living space but are interested in sheds and garages. Thorn stated that he feels they still need a review as there will still be setback issues. A discussion was held on pre-existing non-conforming structures when someone wants to add on to these structures. These come down to the character of the neighborhood, and not making the non-conformance any worse. These still need review for aesthetics. Babcock then went onto discuss agri-business. We should be looking at using leftover structures that farmers no longer need, or no longer work for them. Such as barns for special event centers. He stated the existing plan wanted to preserve the rural open farm scenic character of the Town. Keeping small housing tracts close to the Village. It was decided that at this time they have no further suggestions for the committee.

III. Meeting Adjourned

Thorn made a motion and Crocker seconded the motion to adjourn the meeting at 9:10 pm. All Board members present voted aye, Vote was carried unanimously.

Respectfully submitted,

Kimberly Rayburn

Planning & Zoning Board Secretary