

TOWN OF EAST BLOOMFIELD

**Zoning Board of Appeals
February 27, 2019**

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

Others Present: Kim Rayburn (Secretary), Jim Kier (Code Enforcement Officer), Brian Hemminger, Marks Engineering (Agent for Spencer).

Thorn opened the meeting at 7:30 pm, Ontario County ARC/ Stantec Consulting Services cancelled due to the weather.

I. 7:30 Zoning Interpretation: Owner David Spencer (agent) Marks Engineering property located at 7203 St Rts 5&20. Applied for a Special Use Permit and an Area Variance to erect two mini storage structures. They are asking for a zoning interpretation from the ZBA for the front setback area variance as they feel it is not required per section 135-68 B. The Code officer feels it does per Article X. Special Permit Uses § 135-52. General provision, 135-68 Commercial storage buildings and mini-warehouses & section 135-11 Regulations applicable to all districts (135-11 I.)

Thorn asked Rayburn to explain what is being requested of the Zoning Board, Rayburn explained that the applicant Davide Spencer, and his agent, Marks Engineering have a difference in opinion on the interpretation of the code than the code Officer Jim Kier. We are here tonight to explain both sides and have the Zoning Board interpret the code for themselves and to inform both parties of their decision on their interpretation.

Rayburn read the code as written and Kier gave his interpretation. (see below)

[Chapter 135. Zoning Article III. General Provisions Applicable to all Districts](#)

[§ 135-11. Regulations applicable to all districts.](#)

[I.](#)

For the purpose of regulating the location of buildings on corner lots and on lots extending between two parallel streets, all portions of a corner lot or a through lot which fronts on a public street shall be subject to the front yard requirements of the zone district in which said corner lot or through lot is located.

[Chapter 135. Zoning Article X. Special Permit Uses](#)

[§ 135-68. Commercial storage buildings and mini-warehouses.](#)

The Planning Board may approve a special use permit for a commercial storage building or a mini-warehouse use *in the CC Community Commercial and the LI Light Industrial Districts*, provided that the following standards and provisions are maintained:

[A.](#)

The minimum size lot shall be two acres.

[B.](#)

The proposed site plan shall meet the minimum setback requirements for other uses as permitted in the LI District *and* as contained in the Zoning Schedule.[\[1\]](#)

[\[1\]](#)

Editor's Note: The Zoning Schedule ([Schedule I](#)) is located at the end of this chapter.

[C.](#)

The maximum number of individual storage bays allowed for each mini-warehouse structure shall not exceed 200 feet in linear building length.

[D.](#)

All surfaces shall be paved, maintained and well drained to approved drainage facilities.

[E.](#)

All units shall be adequately lighted, both exterior and interior. There shall be interior lighting for each storage unit. Interior lighting may be on a time device to permit automatic shut-off. No exterior lighting shall be allowed to cause glare on any adjacent site.

[F.](#)

Each mini-storage unit shall be clearly identified and the owner shall maintain records of all occupied units.

[G.](#)

No mini-warehouse unit shall be allowed to store any hazardous material.

[H.](#)

No mini-warehouse unit shall be used for vehicle repairs or body work.

[I.](#)

Adequate landscaping shall be provided to minimize the visual impact of the warehousing structure on adjacent sites.

[J.](#)

Signage shall be permitted to identify the business and provide information where to contact the owner and as otherwise regulated in Article [XIII](#) of this chapter.

Kier stated that his interpretation is due to all of these sections together 135-11 I. (above) and the word *and* in B. of 135-68 (above), both lead him to say the setback requirements should be required for the district that the property is located in which is the Community Commercial (CC) District, and it is a corner lot fronting both on State Routes 5 & 20 and Oakmount Road.

Kier also stated that once you go to schedule I Commercial storage buildings and mini warehouses it is noted in the LI district that the design standards for such projects are listed in 135-68. Which brings you back to Article X. Special permitted uses. He also noted that for some reason the mini storage is not listed in the schedule under the CC district which he thinks is an oversight, as it is an allowable use with a special use permit in this district.

Brian Hemminger from Marks Engineering (Agent for David Spencer), then gave a brief overview of the property and then gave their interpretation of the code. He stated that the property is an odd shaped lot, it is five hundred and fifty (550) feet in length and two hundred feet in depth. The property is located in the CC district and the proposed mini storage is allowed as a Special Use Permit. They feel that the CC section of the code sends you to Article X section 138-68 and B. states the setbacks requirements shall meet the minimum setbacks for other uses permitted in the LI District.

Hemminger states that they feel the code leads you in a circle, it may point back to the CC district but then it just leads you back to the LI district schedule setbacks, even though it then states the design standards are listed in 135-68.

A brief discussion was held on schedule I and setback requirements. Hemminger feels the code is telling them to use the setbacks in the LI.

Garlapow stated that the introductory paragraph of 135-68 States that the planning Board can approve a special use permit in the CC and the LI Districts, and feels that B. states in the respective LI and CC Districts zoning schedule. She stated it's not exactly clear but it is what makes sense due to the introductory paragraph.

Kier agreed. Hemminger asked why it doesn't say in the LI District or the CC district, instead of saying and as contained in the zoning schedule. Garlapow again stated she feels it is consistent with the introductory paragraph. In both the introductory paragraph and in B. the word and is there.

Thorn stated that if they just meant the LI district they could have stopped at as permitted in the LI District. There would be no reason for the rest of the sentence and as contained in the zoning schedule.

Hemminger agrees that it is up for interpretation, he just feels they have read to code correctly, and its important because for the mini storage they would loose eight (8) units out of thirty-two (32) leaving only twenty-four (24) which is probably unbuildable. Rayburn stated that then a Variance would need to be applied for.

A discussion was held on space, the rear setback would be twenty-five (25) feet as they would be considered accessory structures to the main building facing 5& 20. Garlapow asked how losing twenty-five (25) feet would impact the project, Hemminger stated you would lose the frontage you need to have your positive drainage away from the building over to a catch basin. Rayburn asked why they couldn't ask for an area variance from the rear line, Hemminger stated you have to have enough room to drive through that end as there are storage bays on that side and enough room for drainage which is being pulled behind the buildings over to a drainage ditch.

Thorn asked Crocker for his comments, Crocker feels that the code points to the CC District setbacks. Thorn stated that he feels the second part of the sentence with the word and gives credence to the LI District as one and then there is something else to be considered. Also coupling that with 135-11 those two things both are pointing to the CC schedule. Hemminger still feels that sentence refers to the LI district and schedule, Thorn disagrees due to his reading of that sentence.

Garlapow stated that from a policy perspective why would a drafter allow you to build a mini-warehouse at fifty (50) feet (assuming they were intending on allowing the fifty (50) foot setback) when all of the other commercial businesses and retail setbacks are at seventy-five (75) feet, she nor Kier could think of a reason. Thorn also made a statement to the fact that why would you need to point to another district since allowed in both. Thorn asked the Board for any additional comments, there were none.

Torpey made a motion and Garlapow seconded the motion to agree with the Code Officers Interpretation of the code, the applicant will be held to a seventy-five (75) foot front setback as required in the CC District. Owner David Spencer (Agent) Marks Engineering property located at 7203 St Rts 5&20

Whereas:

1. The introductory language of 135-68 sets up for 2 separate applications for each district

[§ 135-68. Commercial storage buildings and mini-warehouses.](#)

The Planning Board may approve a special use permit for a commercial storage building or a mini-warehouse use in the CC Community Commercial and the LI Light Industrial Districts, provided that the following standards and provisions are maintained:

2. The word *and* in section 135-68 B. points to distinct districts

[§ 135-68. Commercial storage buildings and mini-warehouses.](#)

B. The proposed site plan shall meet the minimum setback requirements for other uses as permitted in the LI District and as contained in the Zoning Schedule.[1]

3. 135-11 below points back to using the zoning district regulations the property is located in

[§ 135-11. Regulations applicable to all districts.](#)

L.
For the purpose of regulating the location of buildings on corner lots and on lots extending between two parallel streets, all portions of a corner lot or a through lot which fronts on a public street shall be subject to the front yard requirements of the zone district in which said corner lot or through lot is located.

4. The property is located in the Community Commercial District, and the applicant is applying for a mini storage in the CC district

Record of Vote:

Mark Thorn Aye

Tim Crocker Aye

Sonja Torpey Aye

Rosemary Garlapow Aye

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

Garlapow and Crocker pointed out that in addition to the above if you keep reading the CC District regulations 135-46 under D, there is E. (see below) The Board feels this also makes their decision stand.

[§ 135-46. CC Community Commercial District.](#)

E. Dimensional requirements. The dimensional requirements in the CC Community Commercial District are specified in the Zoning Schedule I, which is part of this chapter.[2]

[\[Amended 8-22-2016 by L.L. No. 2-2016\]](#)

However maybe a code change should be made to say: *as permitted in the zone district which it is located*

[§ 135-68. Commercial storage buildings and mini-warehouses.](#)

B. The proposed site plan shall meet the minimum setback requirements as permitted in the zone district which it is located.

II. Minutes of January 24, 2018

Thorn made a motion and Crocker seconded the motion to approve the minutes from 1/24/18, All Board members present voted aye, with the exception of Garlapow who was not present at the 1/24/18 meeting.

Minutes of March 21, 2018

Torpey made a motion and Crocker seconded the motion to approve the minutes from 3/21/18, All Board members present voted aye, with the exception of Garlapow who was not present at the 3/21/18 meeting.

Minutes of May 2, 2018

Crocker made a motion and Garlapow seconded the motion to approve the minutes from 5/2/18, All Board members present voted aye, with the exception of Torpey who was not present at the 5/2/18 meeting.

Minutes of July 25, 2018

Garlapow made a motion and Crocker seconded the motion to approve the minutes from 7/25/18, All Board members present voted aye.

II. Meeting Adjourned

Thorn made a motion and Crocker seconded the motion to close the meeting @ 8:35 pm. All Board members present voted aye, Vote was carried unanimously.

Respectfully submitted,

Kim Rayburn

Planning & Zoning Board Secretary