

# TOWN OF EAST BLOOMFIELD

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April 28, 2021

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

**Others Present:** Kimberly Rayburn (Secretary), James Kier (Building & Zoning) Todd & Jennifer Haran (Applicant).

Babcock opened the meeting at 7:05 pm with the Pledge of Allegiance.

**I. # TNC2-21 / BV1-21 Expansion to a non-conforming structure, the addition will be on the front of the existing home and does not meet the front setback. Property owned by Todd & Jen Haran located at 7289 Woolston Rd tax # 94.00-1-46.200**

**Excerpts from the 3/24/2021 ZBA Meeting:**

*Thorn motioned and Crocker seconded to leave the public hearing open to give the Board time to get the Attorney's interpretation of whether this is an area variance, and expansion to a non-conforming structure or both. Also, the Board wants to know what, if any, liability the Town has allowing a structure to be that close to the ROW line. All Board members present voted Aye. Vote was carried unanimously.*

**Excerpts from Email 6.18.2021 sent to the Zoning Board**

*Yesterday Kim and I spoke with Dan Bryson regarding the situation for the Haran case. Here is what was decided:*

- If we in good faith grant a variance for a resident and they have a contractor, or someone hurt themselves in the right of way, Dan feels there is no liability there for the Town. We are not considering granting a variance into the right of way...it will be out of the right of way, regardless of how much variance we might grant, so this is not an issue. Certainly, he encouraged smaller relief, if Todd and Jen are able to build their new garage even a little further back. If you remember Todd said they may have a little flexibility to slide it back a bit. It's up to you how you would like to handle it going forward.*
- The next item from last meeting was how we should proceed and evaluate this case...as a variance and expansion of a pre-existing non-conforming structure. As you know, a case could be made either way about the situation, but at the end, it was decided that it should be treated as an expansion of a pre-existing, non-conforming structure.*

Babcock discussed the ability of the State and County to abandon a portion of the width of the ROW. He does not find anything written regarding a Town being able to do so. He only found discussions on the length of a road or a road through a state forest or school etc. The Town Highway Superintendent didn't have anything to add from the last meeting. Babcock told Haran he would need an Attorney that understands highway ROW law if he wanted to pursue the ROW issue. At this point the ROW stands as is, the ZBA cannot change the width of a ROW. Babcock then explained the map to the Board members showing them the road, the highway ROW and the Haran's property line. He explained that the road used to be a 4-rod road (66FT wide from the centerline) before it was moved. The Town purchased more land to have the road moved.

Babcock asked if the Board had any further questions before moving onto the review.

(1)

**The location and size of the nonconforming use and/or structure; the nature and intensity of the operations involved in or conducted in connection with it; the size and site in relation to it and the location of the site in relation to it; and the location of the site with respect to streets giving access thereto. Conditions shall be in place such that the expansion will not be inconsistent with the orderly development of the district in which the use is located.**

The Board does not feel that the proposed is inconsistent with the orderly development of the district in which the use is located. And its not out of harmony with what is already there.

(2)

**Screening or other protective measures shall be adequate to protect any adjacent properties from objectionable aspects of any such expansion of the nonconforming use.**

The Board does not feel that screening is necessary due to the distance off the road and the curve in the road. Also, the new barn will match the existing exterior of the home.

(3)

**Off-street parking areas shall be of adequate size for the particular use, and access drives shall be laid out so as to achieve maximum safety and minimum inconvenience to adjacent properties.**

Babcock discussed off street parking. He stated that most garages fill up quickly and cars end up being parked in the driveway in front of the garage. In this case the proposed garage is two feet off of the Town Highway ROW. Typically, you can do whatever is incidental to homeownership in the ROW as long as it does not impose on the highways need of the Row. Examples would be a road, a ditch, a sidewalk, any underground lines or overhead lines etc. The Town does want you to mow up to the shoulder of the road, and clear the snow all the way to the edge of the pavement. In this case the ROW is approximately one hundred (100) feet to the road. The Haran's will keep the existing turn around (horse shoe shaped driveway). The new garage will push the driveway to the west to get around the garage.

(4)

**The Zoning Board of Appeals may prescribe any condition that it deems necessary or desirable to aid it in making a determination on the application and to protect the interests of the community and adjacent properties.**

Thorn asked if there would be a hardship in moving the garage back as the Attorney mentioned granting a smaller relief. The Haran's did have an alternative and after the last meeting they went back and looked at their proposal again. They decided that architecturally its desirable to push it back. The current plan is to shrink the garage to 26 ft 1 inch north to south. This moves the garage back seven (7) feet giving them a total of a ten (10) foot setback to the ROW.

Babcock stated that he and Kier were discussing what Haran had just proposed and they were looking at the roof line, and the ridge line and with the way the gable is now on the garage which is ninety (90) degrees to the house. If you brought it back where would that water go. Babcock asked if Haran was still looking at keeping the mud room. He said he was. If you were able to raise the roof on the mudroom you could have a valley between the mudroom and the gable end of the roof so the water would flow away from the house. Haran stated that with the new layout they would eliminate the vestibule. Also, with the new layout he will have to look at the water run off with the architect.

Babcock discussed drainage and driveway slope with Haran. Haran stated they would have to bring approximately 2.5 feet of fill.

The Board held a conversation regarding storage in front of the garage. Babcock feels that year-round permanent storage of any vehicles or structures that would be in the Highway ROW should not be allowed. Temporary overnight parking will be allowed.

**Babcock motioned and Torpey seconded to declare SEQR a type II, no further action required. All Board members in attendance voted Aye.**

**Babcock motioned and Thorn seconded to close the public hearing. All Board members in attendance voted Aye.**

**Thorn motioned and Babcock seconded to approve the new proposal as presented and in having reviewed the standards for an expansion to a nonconforming structure (in the minutes) and finding no criteria that would discount the Board from approving the expansion for # TNC2-21 / BV1-21, the addition will be ten (10) foot back from the Highway ROW on the front of the existing home. Property owned by Todd & Jen Haran located at 7289 Woolston Rd tax # 94.00-1-46.200**

Whereas:

1. There will not be any year-round storage in front of the garage.
2. The structure will be built as proposed in the revision presented to the Board.
3. Structure will match the existing exterior of the house.

### **Discussion on motion**

Kier stated that we should mention the uniqueness of the parcel and situation. Babcock stated the uniqueness is because the road (pavement) in being built was moved well to the North of where it used to be. Therefore, the Highway ROW was also moved and created this situation.

Torpey stated that the motion should read that there will be no year-round storage in the ROW in front of the garage.

Crocker asked about the ROW regulations. He wanted to make sure that the Board was not putting restrictions on this property that would not be applied to anyone else. Babcock and Kier stated that the setback to the ROW is normally 75(seventy-five) feet. In this case they are asking for a ten (10) foot setback from the ROW after the expansion to their already non-conforming structure. The Board wants to make sure that the Haran's follow the ROW rules that everyone follows by no permanent storage of vehicles and structures in the Row.

**Thorn amended his motion to include the discussions above. Crocker seconded.**

Whereas:

1. Due to the unusual situation with the Highway ROW as discussed above, there will not be any year-round permanent storage in front of the garage that would be in the ROW. Such as travel campers or a shed etc. Temporary overnight parking will be allowed.
2. The structure will be built as proposed in the revision presented to the Board.
3. Structure will match the existing exterior of the house.

### **Record of Vote:**

**Babcock Aye Thorn Aye Torpey Aye Tim Crocker Aye**

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

Kier informed Haran he needs to submit new drawings to show the ten (10) foot setback from the highway ROW.

Babcock informed the Board that next year he would not be seeking the Chair position.

The Board adjourned at 8:00 pm.

Respectfully submitted,

Kimberly Rayburn

Planning & Zoning Board Secretary