

5TOWN OF EAST BLOOMFIELD

Zoning Board of Appeals May 22, 2019

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

Absent: Rosemary Garlapow

Others Present: Kim Rayburn (Secretary), Jim Kier (Code Enforcement Officer), Andrew Cook (Agent for J. Dredger), Ben Testa owner of Aqua Source (Agent for W. Duerr)

Babcock opened the meeting at 7:30 pm, public hearing opened by the reading of the notice.

I. Review TV4-19 for Owner John Dredger property located at 3190 Bailey Rd has applied for an expansion to a non-conforming structure that currently does not meet today's setback regulations for a principal structure.

135-33 Expansion of nonconforming uses and/or structures *The expansion of a nonconforming use or structure hereunder shall be subject to approval by the Zoning Board of Appeals and each case shall be considered on an individual basis.*

Andrew Cook from Premier Homes gave an overview of the project. The homeowner would like to erect a 900 sq ft addition off the rear of his single-family home. The addition will consist of the expansion of the existing living room, adding a first-floor laundry and bathroom, a flex room that will eventually be a first-floor master bedroom, and a three (3) car garage. The garage will be located to the west and then turns to the north near an existing barn. The separation between the barn and the new garage will be approximately six (6) feet. The existing house was built in 1886 and sets forty-two (42) feet from the right of way (row). Current setback regulations are seventy-five (75) feet. The addition will be beyond seventy-five (75) feet, and it meets the side setbacks. Babcock asked if Cook applied for a building permit and was denied, Cook stated he was told he would need approval to expand a non-conforming structure before a building permit was granted. Babcock asked Kier if the separation between the existing barn and the new garage was up to code, Kier stated it was and the garage will be insulated and drywalled. Cook stated that Dredger is a mechanical engineer and he has designed the electrical system. A propane tank will be located behind the existing barn, the septic is to the south, and the leach field is to the southwest. The existing well is shown on the map provided along with outside elevation plans. The drainage will be re-routed out and around the existing barn. The addition will match the existing house siding. Babcock stated that the location, size and intensity is not inconsistent with the neighborhood, the addition will be pleasing to the eye and an appropriate distance from the neighbors, therefore he feels no need for additional screening. The Board agreed. The off-street parking is not applicable, they are not increasing the non-conformity towards the road and the proposed is in harmony with what is there now. Babcock also noted that the Planning Board recognizes they are not increasing the non-conformity.

SEQR- Type II, no further action is required.

Torpey made a motion and Thorn seconded the motion to close the public hearing, all Board members present voted aye.

Thorn made a motion Crocker seconded the motion to approve TV4-19 for an expansion to a non-conforming structure Owner John Dredger, property located at at 3190 Bailey Rd. tax # 94.00-1-1.110
Whereas:

1. The four (4) applicable standards listed in 135-33 A have been sufficiently met for an expansion to a non-conforming structure
2. The location and nature of project is consistent with the neighborhood
3. No need for additional screening
4. off street parking is not applicable
5. The Zoning Board does not feel the need to prescribe any further conditions

Record of Vote:

Art Babcock Aye Mark Thorn Aye Sonja Torpey Aye Tim Crocker Aye
All Board members present voted Aye. Vote was carried unanimously.

II. TV5-19 Area Variance signage 6610 St Rts 5&20 tax # 81.00-1-63.000 Owner William Duerr, Agent Ben Testa Owner Aqua Source

7:45 pm public hearing opened by the reading of the notice.

Babcock wanted to have a discussion with the Board before reviewing the application. He stated that he's unclear of the title of the action they should be reviewing. Is it considered an Area Variance for signage or because of what is there now should it be a non-conforming use? He then went on to explain that due to the additional signage beyond what's already there it looked like an area variance for size and quantity. However, it could be considered a non-conforming use due to what's been there for years and what is there now. Babcock stated that the existing signage would not be allowed under existing code if a new structure with two (2) businesses was erected. The current code states that if you have multiple businesses you can not have signage out front for each business, the ground mounted sign would have to be the name of the plaza. When the structure was built it was one business, in 2008 they were granted permission to have a second business, but at that time they did not discuss signage, they left it up to the code officer. The existing signage is non-conforming as it existed before the existing signage code. Babcock asked if the signage was legal before this applicant wanted to add additional signage. Kier stated it was legal in the sense that its non-conforming and has been as no changes have been made to the signage in years except for name changes. The sign code has changed as well that also makes the property non-conforming. The Board held a discussion on the current sign regulations. A discussion was held on the front of the building, there is no room for a building mounted sign on the portion of the building that Testa is occupying. There is a building mounted sign on the side of the building that Testa will improve and utilize.

The Board tired to agree on what they would be reviewing, Kier stated that he felt it was a area variance for signage. Some Board members felt it was expanding a non-conformance. Babcock asked if Testa had applied for a building permit or if the Planning Board had done a site plan review, Babcock wanted to know if the Planning Board was going to look a site plan after their review, or should they have done it before.

Rayburn and Kier stated that a building permit was not applied for as they told Testa he would need approval first and Testa presented everything to the Planning Board at the Variance review, it's also been reviewed by the Ontario County Planning Board. Rayburn asked why the Planning Board would review a site plan before Testa knows what he would be asking for, he doesn't know what would be allowed to be shown on a site plan. Kier stated that the comments from the Planning Board were that the updated and repaired side mounted building mounted sign would enhance the view shed, and the ground mounted sign would not create a line of sight issue. Babcock stated that the prior approval in 2008 for more than one business it might state something about the number of signage or limiting the amount of signage. Rayburn supplied the Board with the meeting minutes from the 2008 approval, unfortunately there was no discussion on signage other than they need to see the code officer regarding signage. Torpey stated they also need to look at the intent of the current code.

Babcock stated that at the time the second business was allowed, maybe the property should have been brought into compliance with the current sign code. Babcock stated that if it is an area variance, they need to know what was conforming, what is in compliance, because as they look at substantiality, they will need to know what's allowed now vs what he is asking for. How much more of what he is asking for is beyond what is allowed. Torpey stated that the Board can put stipulations in place and asked if those stipulations can modify what is currently there. Rayburn stated that what is there in pre-existing and it is allowed, Babcock then stated that anything different is an increase in non-conformity. He commented that they could put stipulations on the current situation and he also stated if we treat this as an area variance because they want to increase the number of signage that's there, there are different standards that they have to apply to each one. So not knowing how to review the proposal is problematic. Babcock doesn't want to get this wrong and misstep.

Torpey asked what the difference in criteria is for both scenarios, Babcock stated that an expansion to nonconformance does not require a seqr review, sign area variance would remain with the property so anything they approve now could be there forever, a non-conforming expansion may possibly go away if the business goes away.

Thorn stated that the Zoning Board asked the Town Attorney how to handle allowing the second business in 2008 as they were unsure how to review the request, the Board feels they may need to ask for an interpretation from the Town Attorney for this request as well. Babcock stated that what happens if the restaurant reduces their footprint and a third business comes in and wants to sell ice cream out the side of the building what happens then. What would they ask for signage? Rayburn stated that the Planning Board will be looking at the Commercial and Industrial signage going forward for changes as we have an issue on West Park Drive with Terphane and the new business Cy Plastics they are not allowed individual signage at the road as well. Kier stated the Victor Walmart sign was done by variance as it was not in their code.

The Board wanted to hear from Testa in an informal conversation as they are not reviewing the project yet. Testa stated that his footprint is very small, his section of the building doesn't allow for a building mounted sign as its only 9 linear feet, so that is why he is asking for a ground mounted sign to be located under the pole sign. He feels he is invisible as the restaurant has a pole ground sign, a small building mounted sign, window signage, pennant and sandwich board signs. He stated that Bloomfield is know for having hard water and he is here to help the residents with that, he needs exposure so traffic knows his business is located there. His original plan was to ask for a pole mounted sign as well, but he felt that pole would be hard to mount another sign to and he was not sure it would hold another sign. Kier stated that there will not be any visibility issues with a ground mounted sign. He is also going to re-logo the existing side building mounted sign, but feels he needs something out by the road.

The Board discussed keeping banners out of the right of way, Ontario County stated that they did not want to add to distractions for vehicles traveling the corridor. Babcock stated if there was a way to fix it from here going forward that would be ideal, he asked if Mugsy's left the building and Aqua source took over could he then use their signs, Rayburn answered yes, he could re-logo them. Rayburn stated the signage that is existing can be re-logo'd, therefore he is really only asking to also have a ground mounted and to have window signage as the current code states building or window signage and there is a pre-existing side building mounted sign he will re-use. But if the existing sign doesn't count then he's allowed the 1 ft by 5 ft window sign and he's only asking for a ground mounted.

Babcock stated that what is there now is probably two thousand times more than what would be allowed if it were new. He again asked what is the substantiality of the request of what is there now vs what would be allowed today? Babcock stated that Testa is representing the owner, so if the Board wanted to suggest something that changes the signage that is already there they could, he stated they can impose any conditions they want.

Torpey stated that she sees three factors to look at, impact on the intent of the code on the character of the neighborhood and the corridor, visibility for the business, and setting president. Babcock stating the reason why the Ontario County Planning Board usually suggest denial for signage is due to travel and tourism and they feel signage is one of the biggest impacts to the state highway. The Town code is set and they don't feel that we should create more of an impact on it by allowing signs beyond our code. We realize almost every business comes in for more signage and that could be part of the problem. Torpey stated that is why we are the Zoning Board for Bloomfield; we are looking at our Town. What we have now is ugly with the huge gas station sign, she feels what he is proposing is a nice attractive sign under the mugsy's sign and cleaning up/repurposing the side building sign. She stated that if the County is concerned about signage, they should look at the gas stations signs, and she would like to know who regulates those. Babcock stated that a super majority is needed for an approval since the County denied the application.

Thorn stated that he is also looking at president, since the Town allowed more than one business on a property, but didn't correct the sign code to match then we will have more similar issues in the future. Thorn stated he is not so sure how to justify the request, since they are not sure what criteria they should be basing their decision on.

A discussion was held on a variance vs non-conforming. Babcock stated If you're looking at it from an area variance request and talking about the number of signs and or additional square footage beyond what is there then we can change what is there and limit what is there as it may be to much and undesirable. We could create something that is pleasing to the eye and more in line with what would be allowed if it were new. Then it would not keep becoming an issue and be out of the character of the neighborhood.

Babcock made a motion and Thorn seconded the motion to keep the public hearing open, seek guidance from the Town attorney and the Department of State so they can get a clear idea of which way they should interpret the review before moving forward.

Record of Vote:

**Art Babcock Aye Mark Thorn Aye Sonja Torpey Aye Tim Crocker Aye
All Board members present voted Aye. Vote was carried unanimously.**

III. Meeting Adjourned

Babcock made a motion and Crocker seconded the motion to close the meeting @ 9:45 pm. All Board members present voted aye, Vote was carried unanimously.

Respectfully submitted,

Kim Rayburn

Planning & Zoning Board Secretary