

# TOWN OF EAST BLOOMFIELD

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## Zoning Board of Appeals July 15, 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), Dan Bryson (Town Attorney) John Wadsworth (Applicant) James Spelman (Applicant), John Refermat (Spelman Attorney) James Nardozzi, Michael Nardozzi (Purchaser of the property), Jeremy Shur (Nardozzi Attorney), Victoria Damon, Neighbors: Holy & Mike Lovejoy, Ron & Sue Uihlein, Ken & Charlene Dehn, Jennifer & Brad Murray, David McClelland, John W. Wadsworth, Megan Wadsworth, Cathy Loiacono, Ruby Birdsall, Heather & Mackenzie Kenyon, Kelly & Tane Talbot, Todd and Kathy Robinson, Brett & Michelle Winter, Jacob Root, Shiloh Root, Fred Haeflein.

**Babcock opened the meeting@ 7:00 pm, Rayburn read the Public Hearing notice, the Public Hearing was opened. Rayburn reviewed the neighbor notification letters for Wadsworth.**

**I. 7:00 pm Review TV5-20 for an Area Variance, Owner John Wadsworth**, property located at 2244 State Route Rt 444 tax map #54.03-1-43.000 has applied for relief of the 275 ft road frontage requirement for a future subdivision. He is requesting that both parcels maintain 189 ft of road frontage to maintain the 2-acre minimum lot size in the AR-2 district.

Babcock asked Wadsworth to explain his proposal, Wadsworth stated that he has lived on this property for sixteen (16) years. He is requesting an Area Variance for frontage as he is close to retirement age and his son would like to build next to him. He stated he had a hard time finding a surveyor, his current lot is a 4.3-acre lot according to his survey. He looked into the road frontage and realized that the Town requires two-hundred and seventy-five (275) feet. He then contacted the Town and spoke with Rayburn who advised him that he could do a flag lot or apply for a variance if he could not meet the minimum. He then stated a flag lot requires sixty (60) feet of road frontage, which is considered the panhandle or flag pole. The flag pole cannot be counted in the two (2) acre minimum requirement making the new lot non-conforming which is prohibited. The lot would then go behind his property instead of next to it which is also not ideal and it places the house further back on the lot. He also stated that he has neighbors up and down Rt 444 that do not have two hundred and seventy-five (275) feet of road frontage. His son would like to get a desirable lot if he's going to spend somewhere around two hundred and fifty thousand (250,000) to build a home. He also stated that the Planning Board had some suggestions, and stated they could request a reduction in the flag from sixty (60) feet to thirty (30) feet, however that still does not meet the two (2) acre minimum, and if he asked for the panhandle to be included in the acreage he could possibly have one (1) non-conforming lot instead of two (2) however, He stated his neighbors are aware of his proposal and are ok with it. George Muller sent back a response letter that Wadsworth read to the Board stating he has no concerns with the proposed. Jarod Rogers also has no concerns.

Babcock asked the public for comment, there were no comments. The Board then discussed the Area Variance criteria,

**1. Self-creation:** They do feel the proposed is self-created.

**2. Undesirable change in the neighborhood:** They do not feel it is an undesirable change in the neighborhood or to nearby properties as the neighbors do not have any concerns, and it will not be noticeable going down 444.

Garlapow stated that she agrees that the proposed is in keeping with the neighborhood, the placement of the houses and setbacks. Babcock asked if the width of the lot was ok, and if they could keep their home less than ninety (90) feet from side to side to give you the allowable fifty-foot setbacks. Wadsworth stated they could.

They asked about the setback from the ROW of seventy-five (75) feet, Wadsworth stated they plan on setting the

house approximately two hundred (200) feet back. Also discussed were setbacks to the well and the existing shed. Wadsworth stated that the shed can be moved if required.

Babcock stated he thinks the distance from the side yard to the well is ten (10) feet but it should be verified with the Planning Board.

**3. Substantiality:** Babcock stated that the property is close to or at the required lot size for the AR-2 District, one hundred and eighty-nine (189) feet is greater than half of what is required, Garlapow stated that it's a thirty one (31) percent variance but in light of the facts she does not feel its substantial, Torpey agreed and stated it does not seem out of character with the surrounding neighborhood.

**4. Benefit could be achieved by other means:** Thorn stated that he thinks that a flag lot could be more conforming, but not appropriate for this lot and it does not change the nature of how it's going to be laid out, so dividing it in half seems like it's a simpler and more elegant solution.

Babcock asked if there had been any perc test done on the property, Wadsworth stated they had and a deep hole test as well. Babcock stated that because the lot is less than five (5) acres in size the subdivision map needs to show that information to the Planning Board.

Babcock asked for any further discussion from the Board, there was none.

**ZBA Decision:**

**Thorn made a motion and Crocker seconded the motion to Approve TV5-20 for an Area Variance, Owner John Wadsworth,** property located at 2244 St Rt 444 tax map #54.03-1-43.000 for relief of the 275 ft road frontage requirement for a future subdivision. Both parcels will maintain 189 ft of road frontage to maintain the 2-acre minimum lot size in the AR-2 district

**Whereas:**

- 1. The 1 lot subdivision will not be an undesirable change to the character of the neighborhood**
- 2. The benefit sought cannot be achieved by an easier, better or more elegant method**
- 3. The requested Area Variance is not substantial**
- 4. The proposed Variance will not have a detrimental effect on the environmental conditions of the property or neighborhood.**
- 5. The request is self-created**

**Record of Vote:**

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

**II. 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.

Babcock asked for the prior WEBEX draft meeting minutes from the 6/24/2020, he wanted to give a brief refresher of what happened at that meeting. He gave an overview of the meeting minutes and he informed the public that this is a continuation from the prior meeting and the at the public hearing is still open. There were copies of the prior draft meeting minutes available to the public on the sign in table. Babcock stated that the applicant told the Board of their intentions and a history of the parcel. Spelman stated he has a buyer for the property and the purchase offer is dependent on the Towns approval. Mr. Nardozzi discussed his plan to relocate his business and utilize the property for storage, materials and equipment, office space and more outdoor storage. Talbot has some concerns regarding traffic and the addition of trucks, equipment concerns and water quality with working on equipment. There was a discussion with Nardozzi. Todd and Kathy Robinson stated their concerns, discussion was held, he feels that the property has and will continue to devalue his property. The Board decided to leave the public hearing open, they discussed the purpose of the Use Variance and whether it was a modification of the existing Use variance or if this is a new Variance. It was stated that Spelman was granted a Commercial Use Variance. The Code Officer gave comments on what he felt required the review, they talked about where is our

present Town code this type of business would be allowed without a Use Variance. There was a detailed discussion, they eventually poled the Board and it did seem to be a General Industrial Use. Which would be allowed in the General Industrial District, per Town code.

Rosemarie Garlapow did state that she did not see a difference in the scope of work, there is a current construction company doing big jobs and has been allowed to operate for over two decades, now you have another one coming in and doing the same with less employees. Babcock stated he did say that what was going on before may not have been a Commercial Use. Spelman stated they do general construction, small building additions, manufacturing and millwork, Garlapow asked him to clarify millwork, Spelman then stated they built cabinets, adhesive finishes, and corian countertops. They also did drawings of the nuts and bolts of a project, sub assembly drawings and then manufactured the equipment, such as church pews and head walls for hospital rooms. Torpey asked Nardozzi how he would use the property, they stated it will be similar to what was there and they will work M-F with the occasional emergency for municipal work. Garlapow stated that Spelman did engage in manufacturing and Nardozzi will not, there will be a reduction in employees and traffic and feels it will be less of an impact that what was there. Nardozzi stated his equipment is comparable to what you would see on a farm and the equipment will not be on site unless it is there to be worked on. He also stated he is considered essential by the State of New York as he does work for public utilities and depending on what time of the year it can be 40 to 90 percent of their work. The Board did discuss essential services and the Town definition of essential services. There was a discussion regarding the outdoor storage, Nardozzi stated they no longer do snow removal and deliveries would be for water main parts, normal business paper products by UPS or FedEx, a courier service for document deliveries or pick up. Job materials which are bulky in nature would be delivered directly to the job site. They are back up for water main work and parts for Canandaigua, Victor, the Monroe County Water Authority, Thompson Health, and Soldiers and Sailors Memorial Hospital in Yates County.

Babcock stated that they do not fall under the heading of essential services by our Town Code definition, and he does not feel it includes a contractor doing work for a government agency, Thorn agreed. Babcock then redirected the Board to discuss what they were reviewing. Thorn stated it was a General Industrial Use in the AR-2 District. Crocker stated that the proposed use does not fit under the existing Community Commercial Use Variance as it's a General Industrial Use. Garlapow stated we would be hard pressed to eliminate contractors from essential services, and stated the use would be less industrial than what's happening on the site. Babcock suggested the public read the 6.24.20 minutes in full. Torpey suggested adjourning that meeting to gather more information, Babcock wanted to pole the Board to see if they were in agreement on the proposed being a General Industrial Use in an AR-2 District. Torpey and Crocker agreed. Garlapow stated that the current Use Variance can still be used, so she will go along with it. Thorn stated that the Board would be doing a disservice if they based their review on past use, as it has morphed overtime from the exact intent of the original variance. He does feel the proposed use fits in with General Industrial. Babcock asked Kier if there were any reasons that Spelman should have gone in a different direction and not needed a variance. Kier stated he understands the comments that Garlapow is making, and he also understands all the other comments from the Board, the outside storage of equipment is why it was sent to the ZBA. Torpey stated that the nature of the current/past business were left unsupervised as it morphed over time to manufacturing and construction work. Garlapow stated that the proposed fits in better with existing variance that what was there. Thorn stated the largest usage is office space, as far as the construction equipment goes the Commercial District only allows storage as follows: 135-46 Community Commercial District

C.

Permitted accessory uses and structures.

[Amended 8-22-2016 by L.L. No. 2-2016]

(2)

Private garages and storage buildings which are necessary to store any commercial vehicles, equipment or materials on the premises and which are used in conjunction with a permitted business use.

The Board is all in agreement that the use is considered a General Industrial Use. Spelman expressed a hardship on the date of the next meeting, the date was moved up from the regular set meeting dates and times. 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. He also stated that the variance packet provided may not be sufficient in demonstrating the hardships. The hardship cannot be self-created and you need to show how it has not been. He suggested the applicants may want to study existing case law that the courts have previously reviewed to obtain an explanation of what is sufficient.

Spelman discussed the causes of his financial hardship, Thorn stated that Spelman should bring any financial proof that he cannot realize a reasonable return on his investment to the next meeting. Nardozzi wanted to be clear and stated to Babcock and the rest of the Board that they consider this proposal to be light/general industrial heavy highway construction/underground utility and work typically associated with it to only be allowed in General Industrial. Babcock stated he believes that was a question. Nardozzi stated that he has nine (9) other business that meet the criteria for commercial and asked if they needed any variances for that, the Board replied no, there is an existing use variance for commercial in place. He also asked how he got escalated from commercial to general industrial. Babcock stated he was not sure who told him that it would be considered a commercial business. Babcock also stated he would provide Rayburn with a copy of the NYS Regulations and she could forward them to the both Spelman and the Nardozzi's. At that point the Board tabled the review.

Babcock then asked for comments on what has already been reviewed, there were none. He stated that they will continue the public hearing and then it was decided that they will use the sign in sheet to call on the public for their comments.

Garlapow asked if it would be helpful to clarify what they are actually reviewing, are they making an interpretation whether the Nardozzi's use under the current Variances will be permitted, or whether this is in fact a new Use Variance application as she does not think that the application submitted is very clear. She feels that after last week the Board is going down a million different avenues and with respect with time it may be good to understand what they are actually looking to get through by the end of today. Babcock stated he would like to do that before the end of tonight's meeting however, he would like to let the public have the opportunity to speak, and go home without having to sit here for three (3) hours. She thought it may help guide their comments. He asked the Board for input; it was decided that the public should speak first.

Babcock stated that he would like to do Roberts rule of order and stated that if the public has a question for the applicant or the professionals here, to please address all comments and questions to the Board. If the Board wants to address them and ask that question they will. Please refrain from asking other members of the public questions as well. Talbot stated he was at the last meeting and agrees with Garlapow and asked what are they here for, are they talking about changing the zoning? Babcock stated that what triggered the meeting is a Use Variance application, the Board has to decide what exactly they are here to do, the applicants have employed professionals to come in and represent them to help determine that. There are a lot of documents that were submitted to the Board yesterday, the Board will need more time to come to a conclusion as they are a volunteer Board and there were forty-five (45) megabytes of material delivered to them. Torpey stated that what is being applied for is a change from Spelman's business to Nardozzi's business. She doesn't know if it matters at this point whether they are calling it a Commercial business or a General Industrial Business, she stated she thinks the input could be based on the comparisons of those two business. Babcock stated that they are not re-zoning the property it is a Use Variance application. Babcock also stated there is an approved use in an AR-2 District, things evolve over time and things change. He wants to give people ample time to give feedback based on the thought that there is a Commercial Use and that there is another business that wants to use it, and there is a Use Variance application for that. Babcock called on the first name on the list and he will go down through it until the last person has been heard from.

**Holly and Mike Lovejoy** were first to speak. Holly stated that they live at 6504 Rice Rd. this is located at the end on the corner of Rice and Brace Rd. They are neighbors to the Spelman property. She also stated that she has a daycare business and she does not have a lot of concerns with a business that has been operating and following safety protocols for years. She trusts Spelman and stated he's done a great job with his business. Her husband drives heavy equipment and drives truck and she is aware of the safety of it. She doesn't feel there is too much

truck traffic. She stated that they have lived at their location ten years and has dealt with cars racing up and down the street, waking the kids up and even coming into the front yard. Never has it been a truck, or a construction worker. She does not feel there is any danger to her family. She feels that business in Bloomfield is a good thing, she is on the PTA and they are always looking for people to help with the Schools. She only sees positives and does not feel it will affect them in a negative way. Mike Lovejoy stated he feels there is more of a danger on Brace Rd. than on Rice Rd. On Rice Rd. there is a stop sign so they have to stop. On Brace Rd. they have to come over the hill and then slow to turn. They are more likely to run into someone coming down Brace than Rice Rd. As for a dump trucks traveling down their Rd., he feels there are more problems with Mullers and their manure trucks, driving them up n down the road and tearing them up. Brad Murray stated that it depends on where you live on Rice Rd. Babcock asked the public not to interrupt and he asked them to please save their comments and to speak to the Board when it was their turn. Holly stated that she has ridden in a dump truck and they are not fast vehicles. They don't accelerate and pick up speed quickly. She feels that construction workers are normally safe people and they take pride in what they do. She feels that its not fair to automatically think that it will be unsafe from the beginning and not give someone a chance. She also stated that she needs a business within a mile for her business. She has a safe haven with NYS so if she has a fire or any other issue they can go to a business or larger home, someone that can accommodate the children in an emergency. She's never had to use it, but she hopes to continue the relationship going forward with the Nardozzi's as Spelman has been great.

Babcock asked the Board if they had any questions, there were none. Babcock also stated that when they consider a Use Variance typically, they have to go through a SEQR process and one of the things you consider is traffic.

**Ron & Sue Uihlein.** Sue stated that for this review we are not talking about Brace Rd. we're talking about Rice Rd. She and her husband have lived on Rice Rd. for twenty-five (25) years and they were there when Spelman got his first Variance. She did not want the business then and there was not a single person on that road that did. Jordan's, Westermann's, Stones and another neighbor who moved and left Town. The first three years were noisy, and since then it changed the characteristic of the neighborhood. It's not the rural neighborhood she moved into. The traffic changed, the employees coming back on a Sunday's making noise, etc. They then received a second variance to increase the building, once the door was open is was wide open. She stated that she does not want her neighborhood to change again. She is physically disabled and plans on living in her home for the rest of her life. However, if this goes through a for sale sign will be go going up. She does not want to deal with the noise and the congestion and the change of her neighborhood.

**Ken & Charlene Dehn.** Ken stated that his questions are not about how the property was used in the past. They live directly across the road from the agricultural field and are not exposed to the noise and traffic. They have lived there for five and a half (5.5) years and have not felt that their location has been compromised by Jim's business. The issue for them as stated in the minutes is there is an encroachment that goes on overtime. A property that started out as commercial use and then begins to become something more than that. If that is what happened on the Spelman property and it morphed into more, then what's the potential that it could happen with the new occupant. And given the nature of that business what is the potential for storing paving materials on the ground? Will traffic of large trucks increase over time, and will they be coming back to you in five (5) or six (6) years and asking for permission to expand their business and use the site more like they use their Salt Rd. site in Webster? He has concerns on them getting their foot in the door and the potential to become something more than what is stated in the request. He also commented on the intersection of Rice and Brace Rd. stating it's one of the most dangerous intersections in the community. Turning North off of Rice onto Brace Rd. your taking your life in your hands. They had a kid come around the corner going sixty-five (65) mph and ended up in their front yard. He stated that if you can envision a large construction vehicle turning North off of Rice and another construction vehicle coming around the corner on Brace also heading North that will be a tragedy. Holly's day care business being on the corner, there will be vehicles coming and going with children in them. Dehn stated he does not really know what the Nardozzi's business will be, he read the minutes and has a general sense of it. There certainly will be heavy equipment, and will that expand overtime? What really is the difference between industrial use and commercial use? Is the proposed a commercial use or is this really an industrial business trying to slide in under a commercial use designation? It could change the neighborhood considerably if it morphs into something different than what the intention is, and he does not know how the Town will prevent it. Or will the Town just rely on the neighbors to blow them in and create some issues with in the neighborhood. If this is an

industrial use, then they should find property within the Industrial District. If it's a commercial use they should not be storing product on the ground if that is indeed part of the consideration. Will there be a traffic study? That also includes the Brace & Rice Rd. intersection? He also feels the morping is risky with a construction company and large equipment.

**Brad & Jennifer Murray** 6784 Rice Rd. Jennifer stated they live in the middle of Rice Rd. They were unable to make the last meeting and were not aware it was happening; they thanked the Board for the meeting minutes. They have a lot of concerns with the traffic and truck traffic. It's already a very dangerous road. They have lived at their location for seventeen (17) years and one time there was an accident where a person ended up in their front yard and he had to be taken away by mercy flight. The accident on their property was a collision with a construction vehicle. There have been others on their neighbor's property as well. There are a lot of blind driveways on Rice Rd. As a neighborhood they have been unsuccessful in getting safety precautions in place by the Town, she does not anticipate by this potential business going in that it will get any easier, but she does anticipate that the danger will increase. The other concern they have is the creep of the use permit, it is a large piece of property and they are concerned about asphalt materials being on the property along with the trucks that are associated with that use. Asphalt equipment is not like mill work equipment it's much filthier and more dangerous and not something they want in their neighborhood. She then when on to say she does not feel that Mr. Spelman has met the criteria for this variance, she does not feel the criteria of self-created hardship is something that he has met. He did state that he is suffering a hardship was due to a workplace accident, and she feels that his failure to keep his employees safe is self-created and Osha would agree with that based on two (2) serious violations that were cited to him. She also does not feel he can meet the criteria of change in the character of the neighborhood, for all the reasons already stated she feels it's pretty clear that the look of the place will change. She does feel Mr. Spelman's place looks nice today and is well maintained but does not feel it will continue with an asphalt company. She stated it's her understanding that the Nardoizzi properties are pretty dumpy. Brad stated that Holly's perspective on the road traffic vs theirs is different as she is at the end of the road where everyone is already stopping. They live at the peak of the hill where everyone is flying by. A construction truck that goes by is picking up speed to roll down the hill. He stated that his wife mentioned they have tried to get a speed limit sign put in to no avail.

**David McClelland** lives on Brace Rd. he has a list of concerns starting with health and quality of life. He thinks this type of business in a rural agricultural residential setting is not in keeping with the nature of the neighborhood. He is concerned about potential fumes from the asphalt being downwind, not to mention the line of site from the back of the facility. He is concerned about the appearance, outdoor storage of industrial products such as millings and asphalt, he would like to see the plan for that. Heavy equipment, traffic has been mentioned he would like to add noise when the trucks are slowing down you will hear the air/jake breaks. The Road was just re-done and it looks great, he is concerned about the road conditions. The left turn situation onto Brace from Rice Rd. And he has witnessed an accident where Mercy flight had to come. The man involved in the accident; his life was ruined. From a financial standpoint, feels it could have an adverse effect on property values. He stated he did have a cordial conversation with Jim. Spelman's property was kept up and it may have well been a farm. The trucks they used pulling the little work trailers is kind of like a truck pulling a horse trailer. Not a lot of noise, not a lot of mess it's a well-maintained property. With the potential buyer it could change how the property is used. He stated that if the Nardoizzi's buy the property and use it for what is stated and that's their intention what will happen when another company buys that property. New businesses tend to reevaluate how their using the property as any company would in such a way, they still conform to the letter of the law but push it to the edge of what is permissible. Then the change is noticeable to the neighbors is this what we are talking about?

Babcock stated that we cannot give you a concrete answer right now as a Board, but individually he can say that a use variance has certain aspects to it which can limit future use if they are granted. Typically, it surrounds minor things that are ancillary to the use, such as building height or lot size or something to do with a number. There has been use variances that the property changed hands and the buyer has a similar use as the use variance that was applied for, so they are looked at as being one in the same. If the use is not limited you may not need another use variance to allow that use. That's why they have to be careful when granting use variances. He stated this Board tries to limit the use and grant the variance at the minimum possible. That's their charge as the ZBA to not necessarily grant the requested variance but to balance the needs of the applicant and the community at large.

McClelland stated he had heard that there would be storage of asphalt which is very different from work trailers and sawdust. Variances open the door for changes and he looked at the Comprehensive plan on what it says about rural, industrial and agricultural zones. There are places that are specifically recommended for industrial, such as Center Point West and one of the parts that's mentioned for encroachment is for traffic and strain on infrastructure maintenance. It states the development and maintenance of commercial and industrial sites are in accordance with laws and vision for the community. He does not feel it falls under that. It also states we need to limit development in environmentally sensitive areas and the area in question appears to run off into Fish Creek. They want to make sure industrial activities do not have environmental impact and the uses are not harmful to the surrounding area and the environment at large. Industrial zones should be defined to avoid adverse impacts on adjacent areas.

**Ruby Birdsall** 6808 Rice Rd., top of the hill. She lives next to the Murray's and her husband has lived on this road for sixty-three (63) years. The road has changed considerably since the business came in. The Town raised the road and it's not safe. She stated she was also not notified. She lives too far away; she realizes that the Town has a distance they go by for notification but is disappointed that everyone that lives on Rice Rd. was not properly notified. She would not have known all of this was going on if it was not for her neighbor. She doesn't let her kids go to the mailbox anymore because of the traffic. They have nearly been hit by vehicles. There's a blind spot on either side of her property, so an increase in heavy trucks and equipment will make it even more unsafe. She asked if you would want this on your street, as they live there and they do not want it.

Babcock asked if anyone remembers the distance being a lot greater for notification, Kier started it was before his time so he cannot comment, Rayburn stated the distances have not changed in the twelve (12) years that she has been with the Town. It's either two hundred (200) feet or five hundred (500) feet depending on if it's within five hundred (500) feet of a State road or another municipality. Birdsall stated she's more than five hundred (500) feet away but it affects everyone on the street. Babcock stated that they would need to request that code to be changed and they can make that request to the Town Board. Rayburn stated the Code Office follows the regulations written in Town Code. Babcock stated that people might read the newspaper and they might read the legal notice, Rayburn stated they might drive by the property and see the notification sign in the yard. Birdsall asked if there was a sign that the property was under review and the Murrays stated that it was up, but it was way back on the property and hard to see. A member of the public asked if the notification was by mail or in writing, Babcock stated that the notification is either by mail or in person. He asked how many days prior to the meeting does the notification have to be? Rayburn stated five (5) or seven (7) days. He stated he touches the property and received the letter two days before the meeting and he wants it on record. Spelman spoke up and stated that he did talk with him in person prior to that and he agreed and said they did. Murray spoke up and stated that the minimum road frontage for a property is two hundred and seventy-five (275) feet, and that it's more than what's required for notification of a project to the neighbors.

**Heather & McKenzie Kenyon.** 6775 Rice Rd. Heather stated that they lived there 20 years at the crest of the hill across the road from the Murray's. Traffic is fast, they have been unsuccessful in requesting a reduction to the speed limit. Her driveway was involved in an accident where a young man lost his life. She does not see the speed from commercial vehicles, and feels similar to Lovejoy as she feels the traffic issue are due to private citizens and young people, not construction vehicles. She feels that the safety of the road is a different issue than the business. She stated that we live in a small town and there is not a lot of tax base. The people that have homes here foot the bill for the tax base for our schools. We need to encourage business coming into our area. She feels the road is an issue but that does not fall on Spelman's Business. It has been an ongoing issue. She has known Spelman for fifteen (15) years, and he is an upstanding member of the community. She trusts him and he says he has researched the company that's coming in. She read in the minutes that he's gone to see the other facility and if he feels this company will be a good fit for his property and the neighbors than she trusts that. If they say they will not have asphalt stored there or asphalt vehicles then she believes him. She understands the concern about growth, but she also understands the home is part of the sale which brings a level of commitment to the area.

**Kelly and Taine Talbot.** Kelly stated they purchased their house to retire, this type of business is not consistent with farming and a lot different than cabinet making. It does not belong in this area; it should belong in a Town

or city area not a farming community. She stated that they are a farm and traffic is a concern; they are at the bottom of the hill so traffic and noise are a real concern. They will hear the jake breaks when the trucks are slowing down coming down the hill. There is no shoulder and they like to go for walks. She stated the traffic is crazy now. Tane stated there is not a lot of truck traffic yet but it will grow, it will not stay small. Kelly doesn't feel this type of business belongs in a rural neighborhood it belongs where there are other businesses. She wants it quiet when she gets up in the morning to do barn chores before work. She does not want to listen to trucks in the morning and the noise from backing up etc. She stated it will ruin the neighborhood and decrease the property values. There are people who say it's good for business, he wants to know how? What does business bring to the town? He feels that Spelman is quite small, so he is scared of what's to come. They have their own workers, so they are not bringing jobs. just more traffic and noise. You cannot compare woodworking to what could potentially come. Spelman's largest piece of equipment is probably their smallest. They don't have trucks on the road now and they don't want to. What will the business bring? He doesn't understand how they will help the community. commercial versus industrial, what's the benefit to allowing such a change. If it was a canoe building shop with small delivery trucks that would be different but the construction business is nowhere near equivalent. If he sees a neighbor speed by his house, he can go knock on the door but it's not the neighbors that are speeding down the road. They want to keep their nice quiet road. He's afraid for their animals. He is already afraid to pull out and turn left now. If this gets passed, and anything happens on that corner he will hold the Town responsible. He's concerned about who's going to be watching the property. He stated that if you go and look at any of the Nardozi facilities it does not look anything like Mr. Spelman's property. The first one (1) or two (2) years could be okay and then it could change, and then they would be stuck with it. Is there a difference on commercial vs Industrial when it comes to the tax base?

Babcock stated that the ZBA's decision-making does not have a lot to do with whether a business contributes to the tax base. If you read the ZBA regulations section 135-13 variance approval procedure, (read by Babcock) and New York State law 267 they have specific points that are needed in order to grant a variance They have to meet the town code, the comprehensive plan and comply with New York State law. The Board also will look at the property values, the effect on the on the neighborhood and safety of the community. Babcock also stated that during the SEQR (State Environmental Quality Review) the board will make a determination on these things and it may include a traffic study, not always but it may.

**Kathy and Todd Robinson.** Kathy Robinson stated that they live right next door to Jim and have been a neighbor of Spelman's for eighteen and a half (18.5) years. They stated he has been a pretty good neighbor she guesses, as they have never met him until a couple of weeks ago. However, with the previous variance they were never notified. When they bought their property from Mr. Stone, they were concerned about the business next door. Mr. Stone said he had a gentleman's agreement with the Spelman's that there would never be any manufacturing. What started out as a little shop is now a 2-story building, the building is twice the size of a ten (10) foot fence. There is a hedgerow, but the hedgerow where they want to put the new building is pines, you can see the house across the street on Brace Rd. She asked if anyone has looked at the plans of the new building? It will drop their property value in the bucket. Their granddaughter lives around the corner, again there are traffic issues, deliveries two (2) to three (3) times a day by tractor trailer. Todd stated its during normal business hours and not every day. Sunday night 7 to 12 PM getting ready for Monday. They never complained about that as Spelman's running a business. Then things morphed, the little building morphed into a giant building, and now they want to put another giant building up in her backyard. Todd wanted to discuss the hours of operation, he believes in the previous minutes that they stated 730 to 430, he stated he was in construction all his life and they leave at three (3), four (4), 5 o'clock in the morning to be on the job site and they are not done at three (3). He's personally sat outside the Nardozi facility and watched them leave at these hours of the morning. He stated that the trucks are not clean, the residue from them goes into the groundwater. All the drainage runs across his property and his neighbors land and eventually onto the Talbots and into Fish Creek. He stated that there are a lot of issues that the property has morphed into to this day. Let's hope past practice does not happen again.

Robinson continued and stated there's property that they could go to that shovel ready by 64 and five and 20 and it has water and sewer. He is also worried about flammable liquids. There are no fire hydrants down Rice Rd. and it's likely to be a highly toxic environment. He's worked for thirty-five (35) years as a roofer and has worked with tar. There are construction town trucks that go at sixty-five (65), sometimes seventy-five (75) miles an hour

down their road. and they have all called other towns when they see their trucks and asked them to slow down.

**Brett & Michelle Winter** 6705 Rice Rd. The asphalt business is a dirty, filthy, unsightly business. In his opinion everyone's property values will go down due to this business. If they're planning on bringing paving materials and equipment into the facility, then it has to get there somehow. They will need heavy equipment. They're not towing push mowers in the back of a pick-up truck. It will require heavy equipment. He's worked in construction and there's no set time for your workday. The majority of the time will be five (5) o'clock in the morning till eight (8) o'clock in the morning getting ready to go to a job site, and the neighbors will have to listen to the back up (beep, beep) noise from the trucks. Then anywhere from 1 (one) in the afternoon till five (5) in the afternoon when the job ends. The noise pollution will be horrendous from the trucks. He stated the Jake brakes are needed to slow down and you will hear those the whole way down the hill. Everyone on the road will hear them. He wanted to discuss the access points, one is St Rt. 444, you have to go down a horrendous hill and brakes fail. Trucks don't have brakes like a car. Pond road comes to a (T) cars just fly through that intersection because they can't stop in time, they don't see it coming. If your hauling a trailer with heavy equipment down Brace Rd. and want to turn right there's a blind curve and a hill, so you will hear those jake brakes on the trucks. These trucks need to slow down make the corner. They can't make the corner unless they are at a crawling pace. He pulls out with his truck and trailer pulling a four-wheeler and he can't get out of the way fast enough from normal traffic. There's a lot of blind driveways. He knows of one person that has been killed because a car came over the hill too fast. Trucks cannot stop on a dime. He stated let's go up the hill, trucks need to speed up to get up the hill especially when they have a heavy load so they will need the speed. They will have to get right on it from Spelman's place and give it everything they got to get up that hill. He stated It's not a little hill its steep. He also stated that asphalt does not smell good. The wind will blow across the land onto everyone property. Again, devaluing property in the area. He does not see anything good about this. He sees no benefits. What is the benefit to our community to house that sort of noise pollution and smell, there is nothing positive. He wanted to point out he was never notified of tonight's meeting and he is within the two hundred (200) foot distance. Rayburn stated she runs the buffering on the Ontario County website and she puts in the buffer area of two hundred (200) feet, and she actually requested Spelman to do five hundred (500) feet. She is not sure how that could have happened. She did print out the list of neighbors for Spelman to send letters to or see in person and she did her due diligence in that area. He asked it the program goes from property lines or house lines? Rayburn stated she's not sure, she just asks for a buffer distance and it prints out a spreadsheet. Babcock stated that we would look into that.

**Fred Haeflein** 2402 Brace Rd. asked if there was a site plan and Babcock stated the Planning Board reviewed a site plan and it is contingent on the zoning board's approval. Haeflein stated that everyone else had brought up everything that he would have, but he did want to discuss the SEQR. Talbot asked who determines whether traffic study is done with the public aspect of everything that's been said and that people have died on this road. And asked if it be factored into for requiring a traffic study for public safety. Babcock stated typically yes, the Board needs to determine that when they review the SEQR and decide if that needs to be addressed. Traffic is typically something that is reviewed. Haeflein asked Babcock to explain SEQR so everyone understands it. Babcock stated that the state mandated every municipal board to review SEQR before they make a decision. They need to consider the effect on the environment. In 1990 or 91, it became an official review process. The board has to make a determination of the significance of the project and address those concerns before you can act on the decision. There is a short form EAF or long form. There may be multiple agencies reviewing it, but in this case the lead agency is the New York State Zoning Board of Appeals, on a use variance it's not typically a Planning Board but a Zoning Board. You can find information on the DEC website if you want to look into it.

Rayburn added there was an **e-mail from Christopher Hawk** residing at 1986 Brace Rd. It stated he had received a flyer about a zoning request for Spelman SDC contractors on Rice Rd. Although he's not adjacent to the property he's close enough to hear activity from the property and can see it from his yard. Changes to his use will impact him. It states he does not have knowledge of the official request and has apparently missed the public comment. He asked that we please take this email as a public comment response if possible. The flyer says the proposed use is for highway contractor, possibly Nardozzi to run their business from the site. This apparently involves heavy equipment storage and staging, but it does not involve manufacturing. He is not opposed to the use; he is in favor of getting the property back on tax rolls. He's in favor of using the quality facilities for

business supporting the community. The property was in use as a manufacturing facility when he purchased his property and he has no expectation of anything different. He sees this is as no different than John Walsh Enterprise which seems fine to him. He supports the non-manufacturing business use of the property.

Babcock asked for any further comments, there were none. He then stated that the public hearing is still open, and no decisions have been made.

The attorney for Spelman, John Refermat stated that it's a privilege to represent Spelman and it's a privilege to be before the board. This is democracy in action. He respectfully disagrees with comments made tonight. He stated that this is a public process and he really credits the public for coming out tonight and with that being said, the chairman's is right to listen to everybody's comments and take them seriously, but this is a legal process. He stated that Mr. Babcock is correct in saying that the standards have to be applied. If we just went by a vote with the people in this room and what they think, and then it was denied that would not uphold in a court of law. He apologized he didn't get the documents to the Board until yesterday. He stated that the fact that matter is there's often a lot of detail required, and in this case, they want to be thorough and they were, they wanted to be fair and they were. He advised the Board and public that if anybody wants a copy of the submission, he would be happy to share it with them. He then went on to say Mr. Babcock is right, we have to apply the law and the law to the facts. We heard a lot of speculation tonight, not to be disrespectful, but that's a fact. The Board has to consider competent facts that are on record. He used an example in the previous minutes that stated the Nardozzi's have a paver in Webster, New York and it would not be at this location. He stated that we live in the age of social media and even well-intentioned people can forward untrue statements. He believes we are all here in good faith. He goes into this assuming, and he hopes we all do the same, that the people are here in good faith. But the fact that the matter is, we have to get the facts right. They submitted a six-page submission to the board that he trusts it will review. What that document does it lays out not just the facts, but the law. So, the fact that somebody stands up and makes an un-factual representation, the board cannot consider it. He stated that were not here for a variance application, were here to request, which is what should happen, an interpretation from this board and an interpretation of the zoning code. He stated that about 23 years ago Mr. Spelman started operating the site. He obtained a use variance and then he got a couple more variances as his business developed. What this board needs to do first and foremost is to interpret whether the Nardozzi company is within that current use variance. That's really really important, and that's what most of our submission is about. He stated respectfully, when we hear people saying "what's going to happen in the future" when so much of that revolves around asphalt and that's just not true. Frankly, more of the conversation has to do with speed on the road. I'm a parent, I understand, and even though I don't live here I think it's a beautiful community. The Spelman's moved here and made this a home and it's still there home. Even after they sell, they will still be in Bloomfield. Some people have acknowledged this, which he appreciates. The problems on Rice Rd., are not because of Spelman. They are not because of the Nardozzi's. This Board needs to make a decision. I don't believe it will be based upon the speed and vehicles on Rice Rd., even though there are very understandable concerns, but it has nothing to do with the interpretation of whether the Nardozzi's are within the existing variance. He stated clearly the board has the authority to make interpretation about whether the variances cover the Nardozzi's use. Here are a couple things about variances. First, they run with the land. What that means is it doesn't expire after so much time and it doesn't expire if and when the owner who received the original variances decides to sell the property. It goes with the land. It's just a fact. The other thing is when they consider whether the new owner's business is within the existing variance, and I could tell from the minutes the board is focused on that and they should be. That is the issue. We also stated that if the board believes that a new variance is required, even though they think clearly it is not, but they wanted to address it. So, they went to the factors and why this would satisfy in the alternative. If the board determined that was warranted, and they want to be clear about this, he thinks it's fair that number one (1) they are looking for an interpretation, number two (2) only if the board and he respectfully disagrees believes a new variance is required they wanted to address those standards and they did. It would be in error for this board to have a system that doesn't apply the standards. It's a wonderful system of public input, but you have to apply the standards. We have an oversight system and there is a ton of case law on issues just like this. The key issues in our submission show why this board should make an interpretation that the Narduzzi's use is within the existing variance. He also agrees with Mr. Babcock that the tax base is not the issue. Some of these issues are no less important, but they're not really how the decision is made. Property values are also an important issue but not for not how the decision is made. The tax base is not a pivotal issue, but frankly, neither are property values.

There's nothing in the record, no competent evidence in this record that people's property values will go down and that it will be a threat to safety. Those kinds of issues that he completely honors and respects and are very fair to talk about but the board has to be focused on the right issues. Mr. Spelman did submit a full EAF/ SEQR to the town. But he needs to be clear about this, He did not have to. Jim did that because he wants to go above and beyond (and it's what he's done for 23 years) what's legally required. We did a lot more than that in a lot of ways with the buffering and the SEQR. A new variance would be subject to SEQR, but this is not a new use variance application. He stated that we want to be as open and as transparent in this, and as forthcoming as we can. Babcock wanted to interrupt and states at the previous meeting he offered to Mr. Spelman if he was looking for expediency then there may be a need for a longform EAF. If he didn't want to have to postpone another meeting because it wasn't here and we asked for one, then he may have wanted to take the time between the meetings to present one, as it may be in his best interest. Reformat then stated Spelman did that, but at the same time he wouldn't be doing his job if he didn't point out that this is an interpretation and the SEQR is a type II action that does not require a departmental review. There is case law on this as well, Lindstrom versus the ZBA the town of Waverly. This comes from the Appellate Division that interpretation is not subject to SEQR. He stated that he's getting the minor unpleasanties out of the way, and it just doing his job. Reformat stated that one thing about the Nardozzi's is that there from Geneva. Which is in Ontario County, and they want to come here. That says something. They're buying the house that Jim lives in now and has for many years. Mr. Nardozzi will live in the house. The closest neighbor will be the Nardozzi's. He stated that his heart goes out to these people truly, about the concerns they have. But the closest house is Jim's house. Mr. Nardozzi will be on the site and if you look at case law, (if this were an application for a use variance) the distances which is a matter of public record, the closest one is the Robinsons which is about five hundred and sixty-five (565) feet away. Spelman is three hundred and sixteen (316) and Trapani is seven hundred and forty-two (742) feet. In case law that counts for a lot. Use variances are granted all the time with properties that are closer than that, and not buffered as well as this one. The other thing is that when we talk about what the town has done and hasn't done there are a lot of properties within a stone's throw from this property that are not up to code. Mr. Spelman is up to code. It will be a very unfortunate situation if the town of East Bloomfield starts selectively enforcing properties based on pressure rather than facts on the law of what who can do what with their property. We have pictures of some of them that I can enter into the record. The key point there is, Spelman is not a guy (most of you know him) that cast aspersions. He stated that he does not believe there's been many complaints in the past 23 years on Spelman's property. He went through the process every single time; he got the variances from this board.

There were different people on the board but this board did its job and the fact that those variances were granted has a lot of legal significance right now. Reformat recapped the standards, are the Nardozzi's within the existing variance, clearly based on the evidence in the record and based on the law the answer is yes. Again, just as an alternative, you have to reach the same result but maybe by a different path. If you consider this application for a new use variance the answer is also yes. He stated that he doesn't know where the talk of general industrial came from, but it's not. The Nardozzi's are going to do most of their work off-site. The asphalt is an erroneous assertion. It's not factual. This idea that they are going to do heavy industrial work on-site is absolutely not true. They work for municipalities. He listened to everyone and feels they were well intentioned but that does not make it fact. The idea of essential services based on what I read so far from what the board has considered is that the Nardozzi's work that they are engaged in, is an essential service. The code says by a municipality. He stated that the Nardozzi's are obviously not a municipality but it is a reasonable inference that municipalities contract out their work. Bloomfield and other municipalities of a certain size contract out their work. So, the private company that does the work for the municipality is an agent and it represents the municipality and has all the rights and responsibilities thereof, so it is an essential service and is within the allowed uses of the commercial community district. He stated that he will respectfully disagree with the industrial thing. It's not that, this property is more like their headquarters. Basically, they do office work and get ready and leave from there and come back. Just for the sake of argument even though he does respectfully disagree, if you thought a different zone is required, just like the board said Spelman's is a commercial property 23 years ago, then certainly the standards are met for a use variance. He also stated that the fact of the matter is, in their submission which is available to anyone, they went through the different categories, type of business, hours of operation, employees and on-site operations. Every one of those categories when you look at the facts, the Nardozzi's have either the same impact as Spelman or in some cases it's less. A couple quick examples of how it's less, one is the trucks. Because of the nature of the work of what Spelman's business was, trucks will come and go frankly all hours of the night. That

will not happen with the Nardozzi's. They have much more regular hours.

The town has a good code enforcement process. Mr. Kier is here for a reason as well. If there are code violations anytime by anybody, frankly, that should be taken up. But that's not what this is about. That's not what were here for tonight. If the board is asked to get into things like that as part of this consideration, they will be asked to do something frankly that's not its job. It could lead to a very very erroneous situation that would have to be corrected through the judicial system. But He doesn't think that will happen. Torpey and Babcock asked Refermat to elaborate on that. Refermat then went on to explain that the board has standards that they have to consider, they have to consider the facts. Facts that are competently in the record. Some of that is what people say here tonight, but the fact the matter is Mr. Spelman and the Nardozzi's submitted hard facts that are part of the record. And as much as he respects the process and the people here, the fact of the matter is, as he stated in his submission. It's understandable, there's public concern about a situation like this. He frankly thinks it's wonderful that people are here tonight. He also stated if that well-intentioned good faith sincere concern becomes the main issue for this board, it could become an issue. When this board makes a decision, it has to set forth the facts that it considered to make factual findings. If they say: well there's a lot of speed on the road, but I have no doubt that the board will consider the proper standards, so it shouldn't be an issue. Babcock stated he had mentioned just before that, he mentioned code violations. He asked what Refermat meant, and for clarity is he saying specifically, like in terms of what the Board considers are you referring to the public's comments about a code violations? Refermat stated that code violations are an ongoing thing. Yes, code violations can and should be identified at any time during the process, your correct on that and you don't need a public hearing for that. The correct answer to the question is if any code violations or any other concerns that are being expressed tonight, if those become premanent of the Boards consideration that would be contrary to the law. Torpey didn't understand the comment when Refermat said that the Board would be forced to do something that is not their job. Refermat stated that the Board has a good attorney that can advise them on that, but the Boards job is not to (on this application) look into what the speed limit should be on Rice road. is just not. Based on what he has heard tonight he thinks it would be a very very good thing for the appropriate municipal authorities. but is not the job of this Board.

He stated that we live in the age of the internet, and you can go to the Nardozzi's website to see pictures of their property (you can also see pictures of other properties like he turned in tonight) it's not his intent to cast aspersions on anyone, but the fact of the matter is if they are going to discuss code violations, there is a bunch of stuff that may not have been addressed in the area. Things happen.

Spelman has been at his property for 23 years and now, when the time comes for him to sell the property that he has invested over \$1 million dollars in (and that's part of the reasonable return factor) he is trying to do it the right way. He's doing more than he needs to do legally going above and beyond. Refermat stated that he has not heard one thing tonight about code violations about the Spelman's, frankly for the opposite. He heard that he ran a very good business and was a very good community member. He hopes he answered the question. He again stated that traffic will be less than the Nardozzi's and the hours will be more regular. These are not easy issues, he stated he does not take cases unless he believes in them. He knows Mr. Spelman, and he knows what he's done. He has thoroughly investigated and spent a lot of time looking at the facts, and the history of the property. They are asking pursuant to its authority and responsibility under the code to make an interpretation on whether the Nardozzi's planned use written in the record is within the existing use variance. For the sake of argument, if you think it requires a different zone even though clearly it doesn't. If you look at what they are actually doing, he does satisfy the standards for a new use variance as well. Spelman is going to sell his property; he needs to obtain a reasonable return on his property. He can't do it if this doesn't happen. There is a real estate expert analysis in the submission about the return, and this happens in business, he will keep his business under different form and a smaller form. The property is no longer viable for his business. He is staying in Bloomfield. They ask the board does the Nardozzi's use falls under the existing use variance that runs with the land. He thanked everyone for their time.

Babcock then asked Spelman if there was anything he wanted to follow up or add for himself, Spelman stated not at this time.

Jeremy sure the Attorney for the Nardozzi's then spoke. Jeremy offered a copy of his submission. Garlapow stated she received it via e-mail and she has read it. It was included in the submissions by Refermat. Shur stated that Mr. Refermat had hit the high notes He wanted to reiterate a few things, the way that they see it, they seek an interpretation from the Board not a new Use Variance. He went back to the old variance in 1997, 1999, 2002, use Variances because that's where this matter begins and ends. What do those variances allow? As time went on those variances became quite broad. In the 2002 variance allowing unloading and loading & storage of trucks in a 24/7 operation. That's what the variances is. The Nardozzi's do not plan on having trucks going in and out 24/7 seven (7) days a week. That is what the variance in 2002 allowed. So, the question for this board is, does the Nardozzi's intended use fall within the existing variances. If the answer is yes, there's nothing more to be done. The board issues its interpretation and says that the Nardozzi's use is allowed within the existing variance and life goes on. There's no need to engage in a further analysis or issue another variance. He wants to make very clear that the Nardozzi's agree with Mr. Spelman's position that the primary question here is an interpretation. That the planned use of the Nardozzi's falls within the existing variances. That's why he went back to the variances and looked at what was said. Shur stated that Mr. Babcock I think you summarized this when you questioned whether the use is similar to the existing use variance and then he stated that he has nothing further to add.

Refermat stated that he does believe that his client has vested rights for what's happened over the past 23 years with the Boards issuance of the variances. He doesn't know if there is going to be a referral to the Ontario County Planning Board but there is a list of items that are exempted from County Planning Board review and that list which is on County website is appendix B. There are thirteen (13) of them, two (2) of them apply here. One of them is number seven (7) which is interpretation by the zoning board, and the other is twelve (12) all permits and variances involving the expansion of existing uses in existing buildings on existing lots. Therefore, there's no need to refer this to the County planning Board. In a certain sense he is sure his client would like to have them sign off on it as in his submission Spelman has the support of the IDA. Refermat stated that the reason is very simple, this is about my client's inability to realize (on the variance issue – even I don't think we will get there) a reasonable return. A submission to the County Planning Board will delay this even longer than has been delayed since the last time. He understands there Covid-19, he understands why there's a delay. It would be improper to delay the review. This is a situation where his client and his livelihood depend on this, he tried to do the right thing. He certainly has gone above and beyond and has done a lot more than he has to do. He just simply wants to point out that this is not a proper referral and its not even a proper advisory referral. He's in a weird situation of having to say Spelman would probably like that, it would help get the facts out and have a better understanding of what's actually happening here. From a legal standpoint, it is not necessary. Babcock stated under general municipal law Article 12 -B section 239-and 239-M, and he also reviewed this with the Ontario County planning Board that a use variance does require a submittal to the Ontario County planning Board based on the fact that there's an agricultural district within five hundred (500) feet of the subject property and it has an agricultural exemption. For a new use variance, it is required.

Babcock then went on to say the applicant, with what they submitted yesterday is petitioning us for a determination rather than a use variance. Which in the light of day a new use variance is what appeared to be originally sent to the Board from the Code Office. He stated that again if they want to make sure they follow procedure, if in case this is a new use variance, there is a submittal date that Ontario County planning Board needs to receive all materials by with a complete application in order to review it at their next regularly scheduled meeting. He just wants to point that out. There are probably some questions that we have for the applicant and Mr. Nardozzi's attorney. If you have a comment and you can keep it brief the public hearing is still open. Mr. Dehn stated that he has heard reference to three previous variances. Is there anything in the law that allows the town to revoke a previously approved variance? There's been some comment tonight about some creep and how Mr. Spelman's business has grown. Also, the anticipation that the Nardozzi's business will be stretching the limits of the variance that's already been approved. Is their process or anyway for community members to participate in helping to move that forward should that be necessary. Babcock stated he's not an attorney, so he is not going answer a legal question, but what he can tell him is seek his own legal counsel if he wants a legal answer. The Zoning Board is an appellate board, he read a section from Town Code. *The board of appeals is empowered to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to public interest.* So, it's not necessarily just somebody that comes in is seek the use variance, but there's also administrative review that we can do in terms of any decision that is made by our board previously. There could

be some things that are constrained by time, again he read Town Code that states anytime anyone's aggrieved by a determination made by administrative officer or body in the enforcement of this chapter they can come to the board of appeals with that grievance. The next step beyond what the ZBA does is typically if someone has an issue is to go to Appellate Supreme Court with an article 78 proceeding. Again, Babcock stated that he is not an attorney, and he is not giving legal advice but from what he understands, those are the options if you are an aggrieved person based on a decision that was made.

Babcock asked for any other comments, Kathy Robinson stated that going back to 2002 Variance, she is an aggrieved by that. It's just because she was not there when the first time when the variances were approved. She stated she just wants to let the Board know that she is in disagreement with it. Babcock stated, so noted. Babcock also stated that If you disagree with the findings after all this goes through. You can apply for the article 78 through the appellate court. They may or may not agree to hear it, but you can apply. Does anybody have any questions for Mr. Spelman's attorney? Garlapow has a question for both attorneys. She read both submissions and they both reference 135 -13 A3 which talks about our ability to interpret matters. The language in there that states where the provisions of this chapter are not clear. She's wondering if they can guide her a little bit, as your requests is for an interpretation and is phrased as such as you would like the Board to interpret and say that what the Nardozzi's want to do is permitted under the use variance. But the language of the code seems to say is that their interpretive matters will be in connection with the provisions of the chapter that are unclear. She stated that the link is probably in the language of the community commercial section. Refermat stated that it's not that the code is necessarily unclear, the interpretation and application from our perspective, it's an application of the law or the code provisions to the facts of the case. Frankly, Spelman could have just gone and sold his property. Refermat stated that what happens in the parties of a transaction, there's assurances. So, they felt it was a good idea to come to the Town first. Refermat stated that he was not part of the initial application, but when he reviewed the facts to the law, we thought it was important to point out it's an interpretation about the facts of the case.

It's not that the code is necessarily unclear, it's that is the Nardozzi's use fall under the existing use variance. Mr. Shur was looking up the definition of appeal under the Town Code as he remembers the definition of appeal being broad enough to include an interpretative matter such as this. Garlapow again stated that our code says that an interpretation will be invoked or asked for when the provisions of this chapter are unclear. She stated that what she thinks they are asking for is that, this that and the other (and you have to tell us what they are) fall under the commercial use. Garlapow asked if they can make a statement about whether the proposed actions by Nardozzi are within current variance permissions.

Babcock asked if he could intervene and talk to the Board. He stated that from what he is understanding, Spelman's attorney Mr. Refermat is saying that initially the facts of the Nardozzi's plans do fall within the current variance, and the other provision for commercial. Garlapow stated that she does not know that we can say make a statement about whether proposed actions for the Nardozzi's are within the current variance. Babcock, from what he's understanding, Spelman's attorney, Mr. Refermat is saying that rather than this initially be judged as a use variance, the application needs to be at least modified and a decision made of whether the code enforcement officers sending of a use variance to the ZBA is a valid action. And whether the property that the use variance application came for actually needs a new use variance. Babcock read the appeals procedure from town code section 135-14 Variance and appeals procedure. Refermat stated that the submission talks about 135-13 A. 3 but he will respond to section 135-14. Garlapow asked that this section assumes we are in the realm of a new use variance correct? Babcock stated that he believes that is what the applicant and his Attorney are looking for is to put the brakes on this being a new use variance. They would like the Board to make the determination first, before we consider use variance application as an appeal of the code enforcement officers determining that a use variance is necessary at all. That is correct. Dan Bryson from Lacy Katzen, LLP is the Attorney for the Town. He stated to put it another way, the applicant is asking the Board to make a determination that a use variance is required. In determining Mr. Kier's interpretation of the application after his discussion with the applicant and the owner that it required a use variance What he thinks the applicant is suggesting is their appealing that determination that they would need a use variance in the first place. Refermat agreed. Definition of appeal in town code states that: *The request for review of the code enforcement officer's interpretation of any provision of this chapter or a request for a variance.* Babcock stated that this is why Refermat was mentioning the submittal to the county. You don't have to submit to the county interpretations or decisions or determinations of a decision

of an administrative officer. A new use variance that falls under the criteria of general municipal law you do.

Babcock stated that tonight it's getting late. People have to get up and go to work in the morning and a lot of the information was given to them yesterday. They haven't had enough time to review the documents. And they cannot make a good determination tonight. Babcock asked if anyone had any other comments, Rayburn asked a question? Before the Board continues at the next meeting, she asked if they were reviewing the application as an interpretation, as that's what they're asking for? Babcock stated they have not decided, they will decide that and the next meeting. Torpey asked if they are meeting before the Ontario County planning Boards meeting as the board moved up the day of this one. The Board held a discussion on when to hold the next meeting. If they decide it's an interpretation it will not go to the county, but if they decide this is a new use variance application it will be required to go to the County. The next meeting should be before the submittal deadline. It was decided that the next meeting date would be July 29, 2020 @Veterans Park at 7 PM.

## **II. Meeting Adjourned**

Torpey made a motion and Garlapow seconded the motion to close the meeting @ 10:17 pm. due to the new submission being presented just yesterday and the Board needs time to review it. All Board members present voted aye, Vote was carried unanimously.

Respectfully submitted,

Kimberly Rayburn  
Planning & Zoning Board Secretary