

# TOWN OF EAST BLOOMFIELD

---

## Zoning Board of Appeals Minutes

July 26, 2017

**Zoning Board of Appeals Members Present**, Art Babcock, Mark Thorn, Tim Crocker

**Absent:** Mike Long, Sonja Torpey

**Others Present:** Kim Rayburn (Secretary), Jim Kier (Code Enforcement Officer), Tim Bruder (Applicant) Jerry Thomas, John and Debra Simmons

**Babcock opened the meeting at 7:30 pm, Rayburn read the Public Hearing, and the hearing was opened.**

**I. 7:30 pm** Area Variance Review TV3-17 Area Variance for Tim Bruder 3572 Silvernail Road tax map # 93.00-3-18.130 Tim has applied for an Area Variance, to erect a 30 x 40 garage/pole barn in front of existing single-family home. A Variance to the front setback is requested Per Schedule I. He will encroach on the front setback by 20 feet, therefore the garage will set 55 feet back from the right of way where 75 is required.

Rayburn reviewed the neighbor notifications, all neighbors within two hundred (200) feet were notified of the proposed project. Bruder stated that he would like to erect a garage/pole barn and the ideal location would be on the left side of the driveway at the highest point as the property is very wet and there is a swale that runs along the left side around the back of the home. There is a gas line that runs on the right side of the driveway and the property slopes off on that side, and the septic is behind the home. Bruder feels that he cannot stay within the front setback because of the topography and the ground is consistently wet. The location he chose is on a higher grade and would also give Bruder a shorter distance for a driveway and for utilities to the structure.

The Board reviewed the regulations for accessory structures, the regulations for having a structure in the front line of the house have changed over the years a variance used to be required, but the Town changed the regulations to allow them with an approved site plan review from the Planning Board. The code states that no detached accessory building shall be closer to the street right-of-way line than the minimum front line setback for the principal building, this is why Bruder requires an area variance.

Babcock asked for any public comment John and Debra Simmons own vacant property across the street. They may eventually build a home somewhere on that property and are concerned about the size of the structure, there is a tree line at the road to block some if it, but it's a big building and they would like to know what the regulations are. Rayburn stated that there is not a size limit on the structure, and Bruder has been approved to erect the garage in front of his home, the reason the Board is reviewing this is to decide if the garage can be erected at fifty-five (55) feet, instead of the required seventy-five (75) feet from the right-of-way. They understand the proposal and the need for the placement of the garage but were just concerned about the size. Bruder stated that he is going to be filling in a gap in the natural buffer at the road line as he likes his privacy as well. The garage will also be the same color as the house so it will blend in with the surroundings.

Babcock asked if the garage would negatively affect them, they stated it depends on what it looks like, Babcock stated that the Town does not have an architectural review Board and Bruder can build the garage without any further approval if he kept it at the min setback of seventy- five (75) feet. Simmons asked about a height restriction, Babcock stated that the maximum height for the Town is thirty-five (35) feet. The Simmons had no further questions or comments.

Jerry Thomas a neighbor to the north on the other side of the road stated that the Simmons property is on a higher ground, so they would be a lot higher than Bruder, Bruder sets below the road so he feels that the concern is irrelevant. The Simmons stated they may just continue to farm the property.

Babcock asked for any further comments from the public there were none, Thorn made a motion to close the public hearing and Crocker seconded the motion, all Board members present voted aye, motion carried unanimously.

Babcock then stated that the planning Board gave site plan approval for the garage to be placed in the front line of the home contingent on the ZBA's approval of the Area Variance. He discussed the State mandated criteria that the Board has to judge to see if the proposal meets the criteria or not, it's based on a whole not on each section of the criteria but the Board has to feel that the majority of the criteria has been met. Thorn stated that the five criteria are as follows: An undesirable change to the neighborhood, alternative method meaning can the desired be achieved by any other means, is the variance substantial, will it have an adverse effect on the environment and is the request self-created.

Thorn wanted to discuss if the variance can be achieved by some other method, the board and Bruder then reviewed the parcel and the pictures provided. Thorn stated that the gas line does not show on the map provided and wanted to know the distance involved, Bruder showed the Board where the gas line comes off the road it runs straight up the north side on the north side of the driveway and then connects to a lateral to the house at the front of the house. Thorn asked why it could not go on this side of the house, Bruder stated that they elevated the property up five (5) feet to build the house on due to the wetness of the property so it slopes off three or four feet continually to the tree line, Thorn asked what the height differential from the house to the property line is, Bruder stated about six (6) feet. If they built this area up to build on it would flood out the neighbor's property. Bruder showed the pictures of the swale and the surrounding property and explained his reasons for the spot he chose, due to it being the highest spot so it will remain the driest, and the location of the swale this would be the most desirable and cost effective. Babcock asked if they could all agree that it may be feasible to locate it somewhere else but there would be a lot more expense involved, the lay of the land changed when the house was built, you could change things but it depends on how much money you want to spend. It's not ideal to do, and the backside is so much lower and would need a lot of fill to keep it high and dry.

Babcock went back to the undesirable change and the character of the neighborhood will it alter the essential character of the neighborhood, he does not feel that it does and it's not unusual to see an accessory structure in front of any of these lots. It is screened by a natural tree buffer. Pine trees do not last forever but Bruder stated he will fill in the existing gap with more.

Is the proposed substantial, Babcock stated he does not feel that it is, Thorn stated he would consider it being more substantial without the tree barrier. Babcock stated if Bruder was asking for a fifty (50) ft variance instead of a twenty (20) foot variance that would be considered substantial.

Is the proposed detrimental to the environment or the health safety or welfare of the community, Babcock does not see any impact, Thorn stated that the spot chosen lessens the impact to the neighbor for additional water run-off, no health or safety issues. Babcock asked what the garage will be used for, Bruder stated that the house does not have a basement, therefore he needs more storage, and a place to put his tractor and vehicles.

Is the proposed self- created? yes, it is as Bruder is asking for a variance to place the garage where he proposed, even though it's the ideal spot for reasons listed.

Babcock stated that there are three out of five Board members present, in order for him to get his variance he would need all three Board members to vote Aye, he gave Bruder the option of tabling the vote until more Board members were present which would give Bruder a better chance if one or all Board members voted Nay at this time. Bruder stated that he would like to go forward with the review.

Thorn made a motion and Babcock seconded the motion to declare SEQR a Type II with no further action, all Board members present voted Aye, vote was carried unanimously.

Babcock stated that he believes if the variance is granted that the tree screening would be required to stay in place, and he believes that the twenty-foot variance does not affect the other variables negatively even though it is self-created and there may be another feasible location although it would be very costly to do so.

**ZBA Decision:**

**Thorn made a motion and Crocker seconded the motion to approve the review of TV3-17 Area Variance for Tim Bruder 3572 Silvernail Road tax map # 93.00-3-18.130 Tim has applied for an Area Variance, to erect a 30 x 40 garage/ pole barn in front of existing single-family home. A Variance to the front setback is requested Per Schedule I. He will encroach on the front setback by 20 feet the garage will set 55 feet back from the right of way where 75 is required.**

**Whereas:**

- 1. It is not an undesirable change to the neighborhood**
- 2. It might be accomplished in another location but it would not ideal and would present a hardship on the owner**
- 3. It is not considered substantial**
- 4. It is not going to cause and adverse effect on the environment**
- 5. They recognize it is deemed self-created**
- 6. Some sort of screening shall remain in place between the road and the barn at all times in consideration of the concerns expressed by the neighbors and shall be maintained at the current height and density as to break up the outline of the building from the road.**

**Record of Vote:**

**Art Babcock Aye**

**Mark Thorn Aye**

**Tim Crocker Aye**

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

Babcock discussed with Kier the need for buffering to remain in place and the need for Kier to review the variance yearly to make sure the buffering is still in place. Kier stated that the existing buffer is not only trees but bushes and things its wild, and as long as its maintained he does not see it being an issue. Babcock stated the Board wants to be sure there is something there to break up the outline of the building. Bruder understands and will maintain the natural buffer.

## **II. Discussion**

Babcock asked if there is any new business to discuss, Rayburn stated that there may be an area Variance coming in for property on Bailey Road for a carport to go over a concrete pad to keep the weather off of his camper. But the carport is considered a structure and cannot stay off the side setback.

Babcock discussed the possibility of looking into the rules for having a alternate Board member, discussion was tabled.

## **III. Minutes of June 22, 2016**

**Thorn made a motion and Crocker seconded the motion to approve the minutes from June 22, 2016, all Board members present voted aye.**

12.28.16 Meeting Minutes could not be voted on as Torpey and Crocker were not present at the meeting

3.22.17 Meeting Minutes could not be voted on as Torpey and Crocker were not present at the meeting

5.24.17 Meeting Minutes could not be voted on as Thorn was not present at the meeting

## **IV. Meeting Adjourned**

Thorn made a motion and Crocker seconded the motion to close the meeting @ 8:45 pm. All Board members present voted aye, Vote was carried unanimously.

Respectfully submitted,

Kim Rayburn

Planning & Zoning Board Secretary