ZONING BOARD OF APPEALS

The hearing on Tuesday, December 9, 2014 was called to order by Chairman Schafer at 7:00 PM.

Members present:

Harry Kwiek

also:

Ray Balcerzak, Bldg Inspector Phyllis Todoro, Town Attorney

Michael Komorek

Donald Trzepacz

Robert Schafer, Chairman

Absent: Harry Kaczmarek

Greg Kalinowski

After Roll Call, the Clerk read the Notice of Public Hearing for Appeals Case #1248 for Leita Reed, vacant land (SBL #127.03-2-1.1) Clinton Street, Elma, who is requesting a variance to approve a nonconforming lot with less than the 125 feet required § 144-98 C(1), residential B.

Leonard Berkovitz was present to speak on behalf of Leita Reed. Leita Reed is the administrator of the estate of her father. Mr. Berkovitz brought additional information for the Zoning Board; the first document was from 2007 and showed what the intent was back then when the property was divided up. The three lots were already designed at that time. The plan was always to create the three lots in the front and then create the flag lots in the rear. The second document is a tax map; the map shows three flag lots on the side of the street as the Reed parcel.

What it has to do with the variance request is that it will not disturb the neighborhood conditions. Also mentioned are two cases from the appellate division. Both cases are in regards to flag lots and the court decision was brought to the zoning board's attention. There is plenty of frontage with the proposed property and no reason not to have access. It can not be sold for development unless the variance is granted. It could not have been predicted that the board was going to do away with the resolution for flag lots.

Mr. Trzepacz had a question as to how wide the driveway access is and it was replied it is 62 feet.

Mr. Schafer asked if Leita Reed's family was the owner when the other parcels were sold. Mr. Berkovitz replied that the family has always owned the parcels. The lot would be sold as a single lot. The original information submitted only showed one parcel and the new information shows three parcels. Mr. Trzepacz stated it is not in the best interest to have the driveway access divided for three lots, one lot would be adequate.

No one spoke for or against the variance.

Mr. Trzepacz made the motion to approve the variance per the original paperwork submitted with only a single lot and that all Town of Elma codes and ordinances are met. Second by Mr. Kwiek Poll vote – 4 ayes Motion carried.

Mr. Kalinowski arrived at 7:20 PM.

Appeals case #1251 for Milton Koutsandreas, 2221 Transit Road, Elma, who is requesting a variance to install a new sign to promote the new banquet facility § 144-102.1, commercial 3.

Present was a representative from NAS Sign Company and Milton Koutsandreas to explain the request for the variance. Paul from NAS Sign explained that the new sign would go on the additional sign that already exist at Alton's. The sign would not have any adverse affect on Transit Road. It would be lit at the same strength and it is an important advertisement part of the business. The sign is dimmable and can be adjusted and is going to advertise banquet events. It will change only once every couple of minutes and there could be a few events a day that the sign would have to change.

Mr. Trzepacz asked if the sign that exist right now is going to mirror the existing sign. The sign would be used less frequently than the sign that already exist. It would be turned off around 11:00 pm. The brightness could be dimmed down to what ever is acceptable. The current sign is plastic with lights. The same type of changes or less will occur on the new sign. Mr. Komorek stated that the Building Dept. would give strict guidelines if the sign would be approved.

Mr. Schafer said the code states no flashing signs are permitted. The Town Board has prohibited these types of signs. Paul said the sign should not be prohibited based on how bright the sign is. When people do not like the sign it is normally because they are scrolling. The sign would just have intermittent changes through out the work day. What would be advertised are the banquet facility events and not the specials at the restaurant. Mr. Kwiek asked if the existing sign is still available at this time. Paul answered that the sign is still available but technology has increased that there is more control with the newer signs.

Mr. Trzepacz said the new sign would have the technology but that not all the technology would be utilized. Mr. Kwiek asked if it is acceptable having the sign mirror the existing sign that is already being utilized.

Mr. Kalinowski asked why the need is for the new technology and was informed that the old technology would become ugly and outdated quicker than the new technology. With the new technology the sign can be changed remotely instead of an employee have to go out and change the lettering as on the old sign.

No one spoke for or against the variance.

Mr. Komorek made the motion to approve the variance and included but not limited to requirements that the time of change be noted and adhered to, the illumination limits do not exceed the current sign on the premise, and the color of the sign background is black. Also that there will be no undesirable change to the character of the neighborhood or property; the benefit can not be achieved any other way; and that there is no adverse effect on the neighborhood. Second by Mr. Trzepacz. Poll Vote: 3-ayes and 2-nayes (Mr. Kalinowski and Mr. Schafer)

Appeals case #1252 for Kyle Miller, 824 Ostrander Road, Elma, who is requesting a variance to install a driveway that is less than the 2 feet from the property line § 144-33, residential C.

Mr. Miller was present to explain why he is requesting the variance. Mr. Trzepacz asked if he is looking for the variance so he can be near the property line of the rear of the property that he is selling on Jamison Road. Mr. Kwiek asked Mr. Miller to show him on the drawing what he was looking to do with a driveway and where it would be placed. There are woods and they are a nice buffer between him and his neighbors. He has buyers that understand that the driveway will be going through the property. The Town Attorney made Mr. Miller aware that he does not need to be before the Zoning Board. Mr. Miller can get an easement from the buyers of the property and does not need a variance from the Town.

The Town Attorney advised that there is no need for Mr. Miller to be requesting a variance.

Mr. Trzepacz made the motion that the variance be tabled until Mr. Miller confirms with his Attorney as to if an easement could be done during the real estate closing. Second by Mr. Kwiek. Poll vote: 5-ayes. Motion carried.

Appeals case #1253 for Kevin Kerl Inc./CarMasters Collision & Glass of 5770 Seneca Street, Elma, who is requesting a variance to sell cars on their property § 145.01-6-35.122, Commercial 2, but not auto sales overlay.

Present were Kevin & Debbie Kerl to explain their case. Debbie proposed that they would like to use some additional space to sell vehicles. They are not looking to get into the business of selling cars; they would like to be able to get a retail dealer New York State License for better deals at auctions so that they could possibly sell a few cars. The proposal is for six spots but they may not be using all six spots at all times. The hardest thing is that there existing customer base does not know who they moved to.

Mr. Kalinowski excused himself from the case. Kevin Kerl explained that the business would be clean and well kept up. Mr. Schafer explained that the area does not allow for selling of vehicles in that area. Mr. Trzepacz mentioned that in that area of Seneca Street there are all ready to many businesses to close together doing the same thing.

Mr. Kwiek asked if they still own the other property and was informed that it was not there's it was leased.

No one spoke for or against the variance.

Mr. Komorek made the motion that the variance be denied based on the fact that no undue hardship has been proven. Second by Mr. Trzepacz. Poll vote: 4-ayes, Mr. Kalinowski excused form case. Motion carried.

The minutes of the last meeting on November 12, 2014 were approved. Motion made by Mr. Trzepacz and second by Mr. Kwiek.

The meeting was adjourned at 7:55 PM. Motion made by Mr. Komorek and seconded by Mr. Kalinowski.

Respectfully submitted,

Kerry A. Galuski Secretary-Clerk