

## ZONING BOARD OF APPEALS

The hearing on Tuesday, February 8, 2022, was called to order by Chairman Kalinowski at 7:00pm.

Members present: Ron Carey  
Shawn Pralow  
Robert Schafer, Alternate  
Gregory Kalinowski

Also: Ray Balcerzak, Bldg. Inspector  
Phyllis Todoro, Town Atty.

Absent: Harry Kwiek  
John Johnston

Appeals Case #1403 for JDCS Celebration, Inc./Niagara Produce of 3131 Transit Road, Elma, NY who is requesting a variance to install a new digital/LED sign § 144-102.1 A, B (1)b, e; § 144-102.1 H, I (2), (8), (9), C-3.

Attorney Ari Goldberg was present to represent Niagara Produce and mentioned the key points to the stipulation and the 30 seconds for the sign to change. Attorney Goldberg stated that the sign will not change the character of that area and there are already several signs, and they change more than every 30 seconds. Attorney Goldberg also mentioned that there are plenty of other visual stimuli on Transit Road and that 30 seconds does not give you enough of time to display messages for the company.

Attorney Goldberg asked the board for a basis for why it is 30 seconds and Mr. Kalinowski stated he is not sure that can be answered and informed the gentleman that a committee has been formed to address digital signs. Mr. Carey mentioned digital signs are prohibited but in the area on Transit Road they are permitted. Mr. Carey Asked where the business has other locations and was informed in Clarence and that the sign at that location changes more than every 30 seconds.

Mr. Carey asked if he has a reasonable number in mind and before Attorney Goldberg answered he asked the timeframe of the committee deciding on digital sign and Mr. Carey said it maybe a few months. Mr. Carey asked the hours of the sign and was informed it maybe 24/7 but that it would have dimming in the evening. Attorney Phyllis Todoro suggested specifying a time frame.

Attorney Goldberg said that 10 seconds would be a compromise and Mr. Carey said he would like to see it a little higher. Mr. Schafer said he agrees with what Mr. Carey has already stated. Mr. Pralow stated Transit Road is one of the exceptions to signs.

Mr. Kalinowski mentioned the ad that was submitted with the paperwork has several different items on it and asked if the display on the sign will have several different items advertised. Attorney Todoro recommended splitting the difference in time and maybe 15 seconds could be agreeable.

In favor of the variance was Leon Berner and no one spoke against.

Mr. Carey made the motion for Appeals Case #1403 for JDCS Celebration, Inc./Niagara Produce of 3131 Transit Road, Elma, NY who is requesting a variance to install a new digital/LED sign § 144-102.1 A, B (1)b, e; § 144-102.1 H, I (2), (8), (9), C-3 be given another continuance. Seconded by Mr. Schafer. All-Yes

Appeals Case #1404 for Thomas Ciminelli of 559 Winspear Road, Elma, NY who is requesting a variance to construct an addition with less than the required side yard setback §144-99 C4, Residential C.

Mr. Ciminelli was present to explain how he wants to add a small addition on the side of the house and that the septic is on the back side of the house and how it would not allow him to build in the back. Mr. Kalinowski asked how long he has owned the house and the reply was since 2013. Mr. Carey asked the applicant to draw where the septic is, and Mr. Ciminelli came to the bench and drew the septic on Mr. Carey's drawings.

Mr. Kalinowski asked if he is limited to the possible locations, and he was informed yes. Mr. Pralow asked if he would consider a basement den and was informed that he had not and that

there is something already done in the basement. Mr. Pralow asked if there is a buffer between the owner of the property and his neighbor and the answer was yes, there are trees.

No one spoke for or against the variance.

Mr. Schafer made the motion to approve Appeals Case #1404 for Thomas Ciminelli of 559 Winspear Road, Elma, NY who is requesting a variance to construct an addition with less than the required side yard setback §144-99 C4, Residential C noting the following criteria:

- 1) An undesirable change would not be known.
- 2) The benefit could not be achieved another way.
- 3) The request is not substantial.
- 4) The request would not have an adverse physical or environmental effect.
- 5) The alleged difficulty is not self-created in this case.

Seconded by Mr. Pralow. Ayes: all

Appeals Case #1405 for Leon Berner of 850 Maple Street, Elma, NY who is requesting a variance to install a new digital/LED sign §144-58 A3, §144-102.1 H, I (2), (8) & (9), Residential C/AG.

Leon Berner was present and explained how he wants to put a five-by-eight size sign with plants around it on his property. He would like the background to be black and the letters would be red. Mr. Kalinowski brought up that his business is in a residential area and that the board would need more detail to make a decision. Mr. Berner stated that Car Star is right next to his property, and they already have a digital sign.

Mr. Kalinowski asked who would be doing the work and was informed by Mr. Berner that his son would be doing most of it. Mr. Carey mentioned the section 144-58 A2 should be A3. Mr. Carey asked if Mr. Berner would be willing to wait until the committee that has been created by the town decides on digital sign and Mr. Berner said he would be willing to do so.

No one spoke in favor of the variance. Against the variance was Jeff Breidenstein of 571 Ostrander Road.

Mr. Pralow made the motion for Appeals Case #1405 for Leon Berner of 850 Maple Street, Elma, NY who is requesting a variance to install a new digital/LED sign §144-58 A2, §144-102.1 H, I (2), (8) & (9), Residential C/AG to be given a continuance. Seconded by Mr. Schafer. Ayes: all.

Motion to accept the minutes from December 14, 2021, by Mr. Schafer. 2<sup>nd</sup> by Mr. Pralow. Ayes: all. Motion to accept the minutes from January 11, 2022, by Mr. Pralow. 2<sup>nd</sup> by Mr. Schafer. Ayes: all.

Motion to adjourn at 8:24 by Mr. Carey seconded by Mr. Pralow.

Respectfully Submitted,

Kerry Galuski  
Zoning Board Secretary