

## ZONING BOARD OF APPEALS

The hearing on Tuesday, April 12, 2022, was called to order by Chairman Kalinowski at 7:00pm.

Members present: Ron Carey  
John Johnston  
Robert Schafer, Alternate  
Gregory Kalinowski

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

Absent: Harry Kwiek  
Shawn Pralow

Appeals Case #1407 for Darcy & Mallory Furniss of 630 Knabb Road, Elma, NY who are requesting an area variance to build a front porch on the existing house with less than the required front yard setback §144-99 C4, Residential C.

Mr. Furniss was present to explain that they are redoing the house and would like a front porch to complete their renovations. Mr. Kalinowski asked if the porch was going to be enclosed and was informed that it will be open. Mr. Carey asked where the measurements were taken from, and Mr. Furniss said it was from the road and the 41 feet is from the front yard.

Mr. Schafer asked about the wrap around porch starting at the east side and going down the west side to the wheelchair ramp and was told that would be the distance. Mr. Johnston asked when they purchased the house, and it was in 2018.

For the variance was Kevin Cichocki of 670 Knabb Road and no one spoke against the variance.

Mr. Johnston made the motion to approve the variance for Appeals Case #1407 for Darcy & Mallory Furniss of 630 Knabb Road, Elma, NY who are requesting an area variance to build a front porch on the existing house with less than the required front yard setback §144-99 C4, Residential C based on 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. Carey. Ayes: 4. Nays: 0

Appeals Case #1408 for Joel Berger of 1740 Bowen Road, Elma, NY who is requesting a area variance to add an addition to the existing garage with less than the required side yard setback §144-99 C4, Residential C.

Mr. Berger was present and explained how he was not aware the existing garage was on the boundary line and that he would like to build a pole barn. Mr. Kalinowski asked what the pole barn would store and was informed it would be used to store his trailer and other equipment and that the building would have utilities.

Mr. Carey presented a google map and asked about a lien to that was on the existing building and Mr. Berger said that would be removed when the new building was built. Attorney Todoro asked how long he has owned the property and the reply was since August of 2021. Mr. Berger told the board that the container that is on the property would be removed if the variance was approved.

No one spoke for or against the variance.

Mr. Schafer made the motion to approve the variance for Appeals Case #1408 for Joel Berger of 1740 Bowen Road, Elma, NY who is requesting a area variance to add an addition to the existing garage with less than the required side yard setback §144-99 C4, Residential C, based on 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. Johnston. Ayes: 4. Nays: 0.

It was also added to the motion that the trailer/container would be removed when the concrete floor is put onto the building and that the side setback is no less than 8 feet.

Appeals Case #1409 for Tupelo Honey LLC of 2350 Bowen Road, Elma, NY who is requesting a use variance to allow for a tattoo parlor inside the business §144-93.7 A2, C-2 Elma Overlay.

Julie Campanella is the owner of Tupelo Honey LLC, and the business has expanded to both the upper and lower section of the plaza and has 10 rooms. She is working to grow the business. Mr. Kalinowski asked if she was told by anyone that opening a tattoo parlor in the overlay district was a prohibited use and she replied that she was by the building inspector.

Mr. Kalinowski asked if she is leasing the property and the answer was yes as of February 2019. He also asked what percentage of room are being used and the reply was maybe 6 of the 10 rooms are utilized. Ms. Campanella explained that her rooms are rented out to independent contractors and that they are not her employees. She has been trying to rent the rooms since 2019. Ms. Campanella also advised the board that her rent went from 850 to 2,000 a month and that she had to take out a loan to do the updates to the space.

Mr. Kalinowski explained the use variance and that if granted that the variance would remain with the property. Mr. Carey asked about the rent and that it went up due to her taking on additional space and that a use variance is harder to get. Mr. Carey then proceeded to go over the criteria for acquiring a use variance and that one of the criteria is that the hardship must be unique to her and only her.

Mr. Carey mentioned the fact that the front window already is advertising tattooing and she informed them it was already in progress when she found out she had to go for a variance. Ms. Campanella asked the board the last time a tattoo artist has wanted to open a shop in town and the board did not know the answer. Mr. Kalinowski mentioned that she created the hardship herself.

Mr. Schafer brought up that the overlay was created for a reason, and he does not like subleasing. Mr. Schafer asked about the other services that are offered at the salon and if they pay a fee to use the room and was informed that they do but that the services that they perform are approved services for that area.

For the variance were: Mike Campanella, Brianna Scanzuso-Paolini and her husband. Mr. Carey made the point that all four of the criteria for a use variance must be met. No one spoke against the variance.

Mr. Carey made the motion to deny the variance for Appeals Case #1409 for Tupelo Honey LLC of 2350 Bowen Road, Elma, NY who is requesting a use variance to allow for a tattoo parlor inside the business §144-93.7 A2, C-2 Elma Overlay, based on the following criteria:

- 1) The alleged difficulty was self-created by expanding to both floors of the building.
- 2) The hardship is not unique to her business.
- 3) Not sure if the request would have an adverse physical or environmental effect on the neighborhood.
- 4) The code was established in 2018 before the business was created and the business could be created in another area.

Seconded by Mr. Schafer. Ayes: 3. Nays: 1 (Mr. Johnston).

Motion to accept the minutes from March 8, 2022, by Mr. Johnston. 2<sup>nd</sup> by Mr. Schafer. Ayes: all.

Motion to adjourn at 8:04 by Mr. Carey seconded by Mr. Johnston.

Respectfully Submitted,

Kerry Galuski  
Zoning Board Secretary