

ZONING BOARD OF APPEALS

The hearing on Tuesday, December 13, 2022, is called to order by Chairman Kwiek at 7:00pm.

Members present: Ron Carey

John Johnston

Robert Schafer, Alternate

Greg Kalinowski

Harry Kwiek

Also: Phyllis Todoro, Town Atty

Ray Balczerak, Building

Absent: Shaun Pralow

Appeals Case #1425 for A.W. Miller Technical Sales, Inc. of 7661 Seneca St, Elma, NY who are requesting an area variance for an addition beyond the allowable square footage in a C-1 district §144-76 F and §144-71, C-1, Residential C.

Bill Miller, Charlie Snyder, and Trish Bailey were present to speak about the variance. Mr. Snyder informed the board that the project was redesigned and that the existing building will be modified. All the current changes meet the setbacks from the front and the side setbacks. Mr. Snyder also went over the landscaping and lighting being done on the building. There will be no light on the south or east side of the building and a row of trees will be put on the property line. A retention pond will also be utilized.

Mr. Kwiek mentioned the size of the building and again asked if another location was look at and Mr. Miller informed the board that a few locations were looked at but did not fit the needs of the business.

Mr. Carey addressed the visit that two of the board members had at the site and that the size of the building went from 30,000 to 21,000. Mr. Schafer stated he still thinks the size is too large and disagrees with the size. Mr. Kalinowski extended his thanks to Mr. Miller for allowing the board to visit the site and stated that this is still a difficult situation with the size.

It was stated that the air conditioning units will be tucked away as far as possible from the Billington neighbors.

No one spoke for the variance. Against the variance were the following:

Barbara Kawa of 7701 Seneca Street

Bill Kawa of 7701 Seneca Street

Jonathan of 1545 Billington Road

Chelsea of 1545 Billington Road

Mr. Carey mentioned that the review of the case was intense and that the code was looked at very closely and the comprehensive plan was also taken into consideration with this case.

Mr. Carey made the motion to deny Appeals Case #1425 for A.W. Miller Technical Sales, Inc. of 7661 Seneca St, Elma, NY who are requesting an area variance for an addition beyond the allowable square footage in a C-1 district §144-76 F and §144-71, C-1, Residential C based on the following criteria:

- 1) An undesirable change would be known in the neighborhood character due to the size of the three buildings.
- 2) The benefit could be achieved another way by making the building a little smaller.
- 3) The request is substantial in the fact that the C-1 code allows for 3000 square feet and presently there is already 31,000 square feet. Currently it is 10 times what is allowed per C-1.
- 4) The request would have an adverse physical or environmental effect.
- 5) The alleged difficulty is self-created in this case since the C-1 code was created in October of 2008 and that a variance was given in 2017.

Seconded by Mr. Schafer Ayes-5. Nays-0.

Appeals Case #1426 for Clifford Merkle II of 2580 Bowen Road, Elma, NY who is requesting an area variance to create a buildable lot which is nonconforming §144-10 A & C; §144-97 C 1 & 3, Residential A.

Mr. Merkel was present and explained that he was looking for a variance to build on a nonconforming lot. Mr. Carey addressed the drainage issue and asked if Mr. Merkle has done anything to correct the issue. Mr. Merkle stated that he spoke with the town engineer and asked the board if the town engineer spoke to any of them.

Mr. Kwiek asked Mr. Merkel if he had asked the neighbors on both sides of the property if either of them wanted to buy the property and he had not. Mr. Merkle asked the board to read the history on the property. The fact that after Gaylord Court was created there have been small streams that were established. Before Gaylord Court was established there was a natural swale.

Mr. Carey stated the issue is not the drainage it is to establish if the land is a buildable lot. Mr. Carey mentioned that the letter that Mr. Merkel gave the board a copy of states as of this date June 15, 1989, the property is a buildable lot. Mr. Kwiek asked if he has done anything further with the property and the reply was that he has taken down a few trees.

Mr. Schafer said he looked at the property and he has the depth but not the frontage, but that the houses that surround the property have the same frontage as Mr. Merkle does. Mr. Kalinowski asked about the time frame and his intentions for the property. Mr. Merkle said his wife would like to sell the property.

No one spoke in favor of the variance. Against the variance was:

Randy Adams of 2590 Bowen Road
Mark Hopkins of 2570 Bowen Road

Mr. Schafer made the motion to approve Appeals Case #1426 for Clifford Merkle II of 2580 Bowen Road, Elma, NY who is requesting an area variance to create a buildable lot which is nonconforming §144-10 A & C; §144-97 C 1 & 3, Residential A 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.

Seconded by Mr. Johnston Ayes-5. Nays-0.

Appeals Case #1428 for Merle Emmons of 1800 Bowen Road, Elma, NY who is requesting an area variance to build a pole barn with less than the required 75 feet setback from the road line and the accessory structure must be accompanied with residence and on a non-conforming lot §144-99 C6, §144-133, and §144-10 C, Residential C.

Mr. Emmons was present and explained that he bought the property five years ago and that there is foundation damage so it is possible that the house will not be able to be fixed and a new house would be built. In building a new house further back the septic would have to be moved further back as well. The pole barn that is going to be built is for storage of the new house materials and the barn will also have power. Mr. Emmons is a contractor and would be doing his own work.

Mr. Kwiek stated a pole barn being built first is different in the fact that a house is not being built first. Mr. Schafer questioned building a pole barn before a residence. Mr. Emmons asked if the house was rented would it be an issue to put up a pole barn first. Mr. Carey questioned that fact that is the house able to be lived in and Mr. Emmons said with some changes it would be.

Mr. Carey said that the house would have to be 50% completed before an additional building could be built. Mr. Emmons asked how he goes about completing this and was advised to see the building department for assistance.

Mr. Carey asked how he builds other homes and what he does with the building materials that have been purchased and the reply was that the materials are left out in the weather. Mr. Johnston asked if he ever considered remodeling the house and was informed that it was considered but that the foundation was the issue. Mr. Kwiek asked the last time someone lived in the house, and it has been at least 5 years. Mr. Kalinowski said having some plans of the house would have been helpful in this case.

No one spoke in favor of the variance. Against the variance was:

Vicki Sneckenberger of 21 Geyer Road
Steve Sneckenberger of 21 Geyer Road
Tom Meany of 90 Elderberry Road
Dwayne Fisher of
Arthur Schutt of 80 Elderberry Road

Mr. Kalinowski made the motion to deny Appeals Case #1428 for Merle Emmons of 1800 Bowen Road, Elma, NY who is requesting an area variance to build a pole barn with less than the required 75 feet setback from the road line and the accessory structure must be accompanied with residence and on a non-conforming lot §144-99 C6, §144-133, and §144-10 C, Residential C based on the following criteria:

- 1) An undesirable change would be known.
- 2) The benefit could be achieved another way.
- 3) The request is substantial
- 4) The request would have an adverse physical or environmental effect.
- 5) The alleged difficulty is self-created.

Seconded by Mr. Johnston Ayes-5. Nays-0

Motion to adjourn at 9:00 by Mr. Carey and seconded by Mr. Johnston.

Respectfully Submitted,

Kerry Galuski
Zoning Board Secretary