

MINUTES OF A SPECIAL MEETING AS HELD BY THE
TOWN OF AURORA PLANNING & CONSERVATION BOARD

December 16, 2015

Members Present: Donald Owens, Chairman
Timothy Bailey
Douglas Crow
David Librock
Norm Merriman
William Voss

Alternate Member: Jerry Thompson

Absent/ Excused: Laurie Kutina
Richard Glover

Also Present: Greg Keyser, GHD
Charles Snyder, Town Councilman

Chairman Don Owens presided over the meeting which began at 7:00 p.m. at the Town Hall, 300 Gleed Avenue, East Aurora, New York. William Voss led the recitation of the Pledge of Allegiance to the Flag.

Don Owens discussed the purpose of the meeting to discuss the revised Town Code. He thanked Chuck Snyder and Tim Bailey for the work involved in reviewing the code.

Chuck Snyder stated that it was a great group of people who worked on the committee.

Don Owens discussed the perception that the town is under threat from major developers and that the town will end up wall to wall subdivisions. We know that isn't going to happen due to the lack of sanitary sewers. There may be large lots subdivisions, but this is expensive and risky for a developer. We are not looking at subdivisions, but the code in general. Rural Residential is a new code.

Chuck Snyder discussed Rural Residential in that it is an overlay to be used in the Agriculture district and affects a property 300' from the right of way.

Don Owens mentioned that there are a lot of individual land parcels in the town. There is a lot of back land that won't be easily developed, but you do see a lot of land being developed on

existing roadways. In some cases it is better to have a subdivision, since there is better control of surface water, roadway, and design.

Doug Crow mentioned that it takes an expensive subdivision to make it look like it isn't all built by the same builder. Some people care about that. In other areas of the country you can see huge towns where every house looks the same.

Jerry Thompson discussed the Brooklea/Pines 2 subdivision and Marano was the builder. There were five styles they were required to build and they couldn't put the same style next to each other.

Chuck Snyder mentioned that this may be something to consider for the Mill Road proposal.

Don Owens stated that this is more difficult in a patio home development

Chuck Snyder stated that Gary Eckis said in a meeting that there would be five styles and sizes to choose from.

Dave Librock stated that the Rice Road development the houses are slightly different.

Jerry Thompson agreed and stated that in other patio home developments there are some choices available. The developer is trying to keep the costs down.

Doug Crow mentioned that builders have their set plans for these patio home developments and any changes to the set plan will increase cost to the buyer.

Chuck Snyder suggested they review the code district by district and answer any questions.

Jerry Thompson questioned the use of "fire resistant walls" in the definition of dwelling townhouse/row house. He stated that this phrase isn't necessarily the definition of a townhouse/row house, but is more a part of the building code. The definition of farm includes livestock but "excludes the raising of fur bearing animals." He mentioned he wasn't sure what this means or if it belongs in the definition of a farm.

Doug Crow assumed that the intent was to exclude the raising of animals for their fur, which you don't do with cows. But this phrase is more for raising of mink and chinchillas.

Bill Voss asked which definitions were already in the code and is it the intent to have these new definitions replace what is in the code.

Chuck Snyder said that the intent is to replace the existing code definitions with a final, revised version.

Jerry Thompson indicated that the definitions are on the Table of District Regulations. He wasn't aware of a section of the code that was specific to definitions. But it will now be spelled out in the code and the table will be gone.

Bill Voss mentioned that there are some definitions in the existing code, such as manufactured and mobile home. So if the new code will replace the old, you should look at the existing definitions and see if they will be changed in some way. He also asked how much the town is allowed to define a farm versus what the State has.

Chuck Snyder mentioned that the State's definition of farm was used but that it may have been modified. He said he would look into whether or not the town can do that and get back to the Board.

Jerry Thompson discussed that his understanding of the State definition of farm has to do with tax code. If any you raise any product and make some money on it, you can get a tax break.

Bill Voss asked if the majority changes to the code involve the uses.

Chuck Snyder agreed that the main focus was the uses of a district. He further stated that there were some changes to setbacks and sizes of accessory buildings, but those changes are straightforward. He mentioned that the committee was going to try to make a comprehensive plan, as far as the growth of the town, through the restrictions of the district regulations.

Bill Voss discussed the definitions of RV and Mobile Home and then looked at the existing code 116-36 and noted that as it is written, it doesn't make sense. He indicated he would send a separate note on this to Chuck.

Jerry Thompson noted that there are inconsistencies in the minimum frontage and depth of lot sizes. He questions the reasoning behind allowing narrow deep lots in an R2 or R3 district.

Doug Crow mentioned that in R2 and R3 they allow the properties to be closer to the street. The setbacks are smaller. He discussed the

Dave Librock mentioned that the house sizes are smaller as well.

Doug Crow asked if there is value to having zoning that represents a cluster of houses, such as in West Falls, which have less frontage, narrower lots, and smaller houses. Do you want to insist that someone who wants to build new there be required to follow regulations that are dramatically different, or are you going to allow it to be closer to that area? He further discussed the minimum setback requirements.

Jerry Thompson questioned why R1, R2, and R3 districts do not have the same frontage and front setback requirements to start with. He mentioned that he understands the differences in the size of the houses in the different districts.

Chuck Snyder mentioned that this is how the regulations have always been. The lot area is all the same (32,000 sqft) because $\frac{3}{4}$ acre is required by the Department of Health for septic approval.

Jerry Thompson discussed the difficulty in house design for a narrower lot.

Doug Crow discussed the philosophical question of does the board finds it acceptable for parts of the town to be almost village in density and allow that to continue in certain clusters. There are clusters in our town that are denser, closer together, and less frontage and do we want to encourage that to continue. Or do we want to make it all the bigger lots, all the bigger frontages whenever possible.

Bill Voss asked if there more buildable lots in those areas or is this more about if a farm was going to be subdivided.

Doug Crow stated that there aren't many buildable lots in the cluster areas. And for the farm subdivision, it depends on the zoning of property. If it is zoned R1, all the lots have to be bigger.

Chuck Snyder stated that there are few R3 zones.

Jerry Thompson suggested including a color copy of the zoning map in the code book.

Doug Crow mentioned that even if you can't see the individual lots, you can still get a feel for the character of the area.

Jerry would like consistency in the frontage of the R districts.

Chuck Snyder mentioned he would bring this up for discussion.

Jerry Thompson stated he didn't find anywhere in the code where there is any place for parking lots in any of the B districts.

Doug Crow mentioned that storage lot is defined.

Jerry Thompson stated that a storage lot is only in conjunction with a business that exists there. Not a lot by itself.

Doug Crow read the definition and indicated that it doesn't say it has to be tied to a business.

Jerry Thompson indicated that it is stated in the definition, but he can't find it anywhere in the code.

Chuck Snyder asked for clarification on the need for a parking lot where you would park and walk to several businesses.

Jerry Thompson clarified that he is discussing a parking lot in conjunction with a business being operated there. In the existing code, B1 or B2, there is a provision for storage, but there is not in the proposed code, unless it is in association with a business.

Chuck Snyder read the definition for storage yard.

Doug Crow indicated this isn't the same thing as a storage yard which could be independent of any business. Like what the dealership wants to do on Olean. He believes this is a storage yard because there is no business on site.

Chuck Snyder discussed page 14 and that used car lot will now read "new and used" car lot.

Doug Crow indicated that this implies the business has to be on the same site. And this is a change from the existing code. This would prevent a dealership to have a lot in town to store cars. If this is intentional, it is ok, but it is a change from what is there now.

Chuck Snyder stated that if it isn't listed here it is not intended to be a use.

Doug Crow said that we are trying to take away that use.

Jerry Thompson confirmed that the intention is to change the code to exclude parking lots that does not have a business affiliated with it.

Doug Crow stated that some intentional changes should be made. He knows of some changes he would suggest.

Chuck Snyder stated that he is here for suggestions. If you have an idea for something that should be changed, bring it up.

Jerry Thompson clarified that his only reason for bringing this up was to confirm the intent of eliminating the use of a parking lot without a business there. It needs to be recognized that the law has been changed and there may be a different process that needs to be followed.

Doug Crow asked if there is a different process.

Chuck Snyder stated that there will be SEQR, a public hearing and a local law, as Greg Keyser mentioned earlier in December.

Bill Voss asked if there anything in the B2 district that would give the town more say over special use permits, such as the West Herr proposal.

Chuck Snyder stated that with the proposed code, this use would not be allowed because it is not in the code.

Jerry Thompson discussed the issue of when he was on the Village Board and there was talk of someone putting an adult store in the village, they quickly made a zoning change. They allowed it in an MI district, where no one will ever go. He discussed his concern that if the town eliminates a parking lot use, it opens the town up to legal action.

Doug Crow asked if it is being eliminated if a parking lot is allowed on the same property as a business.

Greg Keyser stated that parking would be allowed as an accessory use to a primary use.

Jerry Thompson stated that it would be allowed if they put up a building and sold cars out of it.

Doug Crow stated that there is a limit to the accessory use on how much of the lot can be used for accessory use. For example, you couldn't build a tiny building and giant parking lot. There is a percentage of lot that can be used as an accessory use.

Chuck Snyder mentioned that he recalls spending a lot of time discussing off street parking but not the specifics.

Jerry Thompson suggested that the code be clear and simple so that everyone can understand it.

Doug Crow mentioned that he has noted half of a dozen things that are over restrictive. Under the definition of gun club, shooting range archery – the definition says it has to be an outdoor facility. He suggested removing the word outdoor. The definition of night club is overly broad and includes business that we may want to call bars. Aren't there more restrictions on where night clubs can be than a bar.

Chuck Snyder mentioned that a special use permit has to be given for a night club. A special permit also has to be given for a bar/tavern.

Doug Crow asked about definitions of wetlands and the 100' buffer for wetlands. He asked about properties on Mill Road that have wetlands on their property, now half of their properties are considered wetlands.

Don Owens stated no. For a New York State DEC wetland there is a 100' buffer but not for a federal wetland.

Doug Crow stated there were inconsistencies between R1, R2, and R3. For the R1 district, the front yard setback of 75' with a minimum of 45' and if it is on a corner, the side street setback is also 45'. But if you look at the R2 district, 50' with a minimum of 30', but the side street setback is still 45'. If the front is allowed to go to 30', the side street setback should go to 30' as well. R3 is also allowed to go to 30' and 30'. The R2 district should be changed for consistency.

Chuck Snyder discussed the minimum front yard setback allowance.

Doug Crow stated that on a corner lot in an R1 district, the minimum setback for both streets is 45', and in an R3 the minimum setback for both streets is 30', but that in an R2, the minimum setback is 30' on the front setback and 45' on the side street setback.

Chuck Snyder asked if the minimum setback for both streets in an R2 should be 50'.

Doug Crow said he doesn't know if it should be 30' or 45' for the minimum setback from both streets, but the minimum should be the same.

Bill Voss asked for explanation on how this minimum set back works.

Doug Crow stated that if you are in a densely populated neighborhood, like West Falls. In an area, if the houses all have an established setback of 35', then this would be allowable. The minimum would be 30'

Bill Voss asked how this happened.

Jerry Thompson stated that these houses were built way before the code.

Bill Voss clarified that the current average setback can override the front yard setback requirement.

Doug Crow said yes, with the minimum setback of whatever it says in the second paragraph.

Bill Voss asked if this is in the code currently.

Jerry Thompson stated that it is. He discussed a case where he had to ask for a variance on setbacks due to the presence of a gas line on the property. He measured the setback for the houses 1000' along the road to determine the average setback. The variance was granted.

Doug Crow stated that he had to ask for the variance in that instance, but with this code, you wouldn't. If you were in an R2 where the setback is 50' and the average of the neighboring properties is 35' you would be able to build at 30' or at 35' because that is the established setback.

Jerry Thompson stated he didn't have to get approval; he just had to prove it to the building department.

Doug Crow restated his point that it seems odd that in an R2 district corner lot, the minimum front yard setback on the main road is smaller than what is proposed for the side street minimum setback. It should be consistent, as it is in R1 and R3. Those two minimum setbacks off the streets should be the same.

Jerry Thompson asked about the changes to the lot size requirements. He questioned if it the intent to make the lots smaller.

Chuck Snyder stated that yes, but there still has to be ¾ acre for septic approval.

Jerry Thompson restated his position that all the lots should have the same frontage in an R district. If he builds on a lot in an A district, he has to follow the setbacks for the R districts.

Chuck Snyder stated that he would have to follow the regulations specified in the A district.

Doug Crow stated that if setbacks are stated in A district, you have to follow those regulations, unless it says otherwise. That is the difference between the Table and having it written in the code which is a legal document.

Jerry Thompson discussed the uses in the A and R districts on the Table.

Chuck Snyder pointed out the minimum lot sizes. He further discussed the difficulty with a progressive table of district regulations with regard to uses.

Greg Keyser mentioned that there may need to be some clarifying language included saying it applies to use only and that area regulations don't apply.

Doug Crow discussed home occupation definition and that it is not the definition. He also discussed the concept of an overlay district. On page 1, #6 which addresses additional acceptable accessory uses for specific streets in the town, he asked if this should be an overlay district. He suggested an overlay would be a simpler way to accomplish this goal. Future changes to the uses allowed in this overlay would be much simpler to achieve.

Chuck Snyder stated this would be a good question for the Town attorney.

Bill Voss asked if there was any discussion on increasing the $\frac{3}{4}$ acre minimum lot size in an R1 district.

Chuck Snyder stated there wasn't.

Don Owens asked if Bill wanted a larger lot size.

Bill Voss stated yes.

Greg Keyser asked how much the lot size changed from what was required on the table.

Jerry Thompson stated the depth for an R1 was 240' depth it is now 267'.

Doug Crow indicated it has increased 6.5%.

Bill Voss stated that in depth study would be necessary if the minimum lot size was greater than an acre. His concerns are about houses being built close together on town roads.

Dave Librock asked if the frontage requirement would increase.

Tim Bailey discussed the overlay district makes it more restrictive because the areas affected are more residential.

Bill Voss stated the code is already changing by requiring 32,000 sq ft lot sizes (minimum) from 30,000 sq ft. Unless you go to wider frontage requirements, it doesn't change much. It may change the issue of undeveloped back land, where there already is a problem. The town has smaller lots along the road with lots of back land that is potentially an ODA.

Jerry Thompson asked why you would want to say no to ODA development.

Bill Voss discussed safety concerns on these ODAs. He further stated that even if the lot dimensions were wider, the lot wouldn't be deep enough to address the ODA issue.

Jerry Thompson stated that other towns do have lot size minimum frontage of 150' due to rural nature. It becomes difficult to build a ranch house on a narrower lot and still meet side yard setbacks. And the neighbors are close together but you live in the country.

Bill Voss asked if Jerry is arguing for frontage of 150'

Jerry Thompson agreed.

Chuck Snyder stated he would suggest it.

Don Owens mentioned that he doesn't think that would work.

Chuck Snyder stated they discussed it and decided there weren't that many places along the road this would affect. And for 25', it wasn't worth the trouble. If the frontage requirement was to change substantially, to say 200' minimum, then it would be worthy of argument. Discussion was had about widening minimum frontage in the A district.

Doug Crow suggested changing more of the A district to R, but that is a different discussion.

Greg Keyser stated that this would be getting into master plan and community discussion of certain areas.

Doug Crow agreed.

Norm Merriman stated that there is only one working dairy farm in the town, on Cornwall.

Doug Crow asked about the farm on 240 that has the hay barn.

Dave Librock stated that his business is hay.

Doug Crow stated that this counts as a farm use, so there may be a few more out there.

Don Owens stated that there are a few more farms in town, including horse farms.

Jerry Thompson asked about the limit of 3 dogs over 6 months old and questioned how that is enforceable.

Chuck Snyder discussed the concerns about puppies and that this gives the owner time to re-home the puppies.

Dave Librock stated that more people may want to keep goats or sheep or chickens.

Bill Voss asked about the RR overlay. The first 300' from the right of way, will have an overlay even if the lot is zoned Agriculture (A).

Chuck Snyder clarified that the RR overlay only applies to the A district.

Bill Voss asked about keeping farm animals in the overlay. He discussed that if he had an farm on lot in an A district, the first 300' he would be allowed to have 3 dogs, 6 chickens. But if he has a farm with a 100 chickens, but he couldn't keep his farm animals in the first 300'.

Doug Crow indicated these type of situations would be grandfathered.

Chuck Snyder stated that these situations in the overlay would not be grandfathered.

Doug Crow questioned if there would be a grandfather clause for lot widths, setback, building heights.

Chuck Snyder indicated that there would be.

Doug Crow suggested this be clarified in the definitions.

Jerry Thompson suggested he has a house in an A district and he has more than 6 chickens, you can't take that away.

Chuck Snyder stated that in the first 300' this wouldn't be allowed.

Jerry Thompson stated his barn and coop are right next to his house, within this 300'.

Chuck Snyder stated that this would then be grandfathered.

Doug Crow stated that you are grandfathered if you already have a structure existing.

Chuck Snyder stated that the structures would be grandfathered, but the chickens would not. He further discussed how this came about. Properties in the A district are often 300' deep and in the current code you could have many chickens in the A district. Now with the overlay, if you only have 300', you only get 6 chickens. The intent is to protect the neighbors.

Bill Voss stated that a neighbor has a large horse farm with a fenced area that allows the horses to go up to the road. With the overlay they would have to move their fence so that only 2 of the horses can go within 300' feet, the others have to be behind that 300'.

Chuck Snyder said that is correct.

Bill Voss stated that this must be clearly communicated to the public because of the impact. He related the issue regarding the master plan discussions and a rumor that the number of horses was going to be restricted. If the public hears that there will be restrictions on horses, the building will be flooded with angry citizens.

Jerry Thompson does not agree with the RR overlay and specifically, the limits of no more than 2 domestic animals, 6 chickens and no roosters. That is the reason people move to an A district – they have 5 acres and want to keep their 5 horses there.

Bill Voss stated that the problem is with the 1 acre lots up front.

Jerry Thompson thinks that the RR overlay is a knee jerk reaction.

Doug Crow mentioned that he thinks the overlay is trying to solve the problem that there are too many properties zoned A.

Don Owens asked if another town has an RR overlay.

Greg Keyser mentioned that the Town of Porter has a Rural Residential overlay.

Don Owens asked Greg to get feedback from Porter on this.

Dave Librock expressed concern about manure and that it says you can have a pile 60' away, but it doesn't say where you can spread it.

Bill Voss expressed concern about existing properties that already have animals in this RR overlay. He said that if he has a 10acre lot and he has always had chickens, if someone moves in next door, it's their problem.

Greg Keyser asked if the Town has a Right to Farm law.

Don Owens confirmed that we do.

Doug Crow suggested that Right to Farm is really a general guideline principle. He has heard it is truly binding, but that it is a way of encouraging farming.

Don Owens stated that it prevents neighbor complaints due to your farming.

Dave Librock said that manure could be spread right up to a property line.

Bill Voss stated that it wouldn't be allowed in the 300'.

Tim Bailey indicated the RR overrides that.

Greg Keyser stated that he would expect comments during the SEQR process from Ag & Markets that would say that the RR would not apply to State Ag Districts.

Bill Voss questioned the RR overlay on page #10, if you one acre you can have one horse, goat, sheep, (etc.) but if it's a pig, you need 2 acres. It seems arbitrary.

Chuck Snyder stated that it is an odor issue.

Bill Voss said someone could argue the odor issue with sheep, horses and goats.

Greg Keyser asked if anyone has figured out how much of the land that is zoned Ag has more land that goes beyond the 300'.

Jerry Thompson reviewed the map and noted R1 zoning along county highways for 300' and then the property behind that is zoned Ag.

Greg Keyser mentioned that it seems the areas where there are problems with chickens and such are in the areas where it is already largely developed.

Jerry Thompson stated that it doesn't make sense to make a law like this in response to 10 complaints out of the whole population of the town.

Greg Keyser suggested a compromise on the RR overlay: maybe the regulations of the RR overlay do not apply on parcels where more of 50% of the land resides beyond the first 300'.

Both Jerry Thompson and Don Owens liked this suggestion.

Don Owens further stated that once the parcel is split, the RR overlay would then be in effect.

Tim Bailey stated that there should be exceptions to the overlay.

Doug Crow stated that in the other sections to the code, the exceptions are clearly stated and indicate if it is the Town Board or Zoning Board that would grant the exception.

Bill Voss noted that there is specific reference to the number of dogs allowable in the RR and Ag district, but it is not referenced in the R1, R2, or R3 districts. He stated it may not need to be included in RR and Ag. He also asked if there is someplace in the current code that restricts the number of chickens in an R1.

Members reviewed the Town of Aurora Code Chapter 116 Zoning §116-19 Keeping animals and fowl in R Districts with respect to chickens. The number of chickens is determined at the Zoning Board of Appeals meeting. The number of dogs allowed by Town ordinance is 3.

Jerry Thompson discussed the limiting of the size of a building in a B1 zone to 5000sqft. He asked where a medical facility would go and why not wanted in a B1 zone.

Chuck Snyder stated that a variance could be requested.

Doug Crow mentioned that he thinks you would want to target the location of a medical park either in the village or right next to it. In general you wouldn't want it in the middle of nowhere in the town.

Jerry Thompson asked what the zoning of Quaker Road out to Transit.

Dave Libroek stated it is Ag.

Jerry Thompson stated that it would need to be rezoned to B to put a medical park there.

Doug Crow stated a variance could be requested.

Jerry Thompson stated that Quaker would be a great area to put in a medical park. There is a lot of land for sale and it is located on a State highway.

Doug Crow agreed and could see that area rezoned.

Don Owens mentioned that the problem with an Ag district is that you can do anything, such as the Trinity Park housing.

Chuck Snyder noted that they have eliminated a lot of that and tried to focus the Ag district on agriculture only rather than a business.

Jerry Thompson stated that there are areas in town that need to be looked at and what you would like to see in that location. There are a couple of corridors on State highways in particular.

Don Owens mentioned that there are large areas on 20A that could be changed to business.

Chuck Snyder mentioned he would bring this up and recalled that when they discussed this earlier, it was a very short discussion.

Don Owens mentioned that zoning is a bundle of rights and this bundle of rights has value. If you take something away from this bundle of rights, you are taking something of value.

Greg Keyser referenced the B2 zone and the special use permit. To his knowledge the Town doesn't currently have that process.

Jerry Thompson suggested caution with the special use permits. The Village went to special use permits in the 80's and it has kept them very busy because almost everything they do in the Village has a special use permit. It comes into the Village Board, they refer it to the Planning Commission who sends it back to the Village Board and then there are the public hearings. It is time consuming. It was a way to control growth, specifically about gas stations and bars.

Don Owens asked that after the minutes are prepared, what is the next step.

Chuck Snyder stated that after he receives the minutes, he will get it to the Town Board and once they have reviewed and if any changes are made he will bring it back to the Planning Board.

Don Owens mentioned the timeline requested by the Town Board.

Chuck Snyder mentioned that this is so that the process keeps moving. Because they still have to get to the ODA and subdivision moratorium. The moratorium is in place so that the Town Board can look at the code and make sure that they are doing the right thing.

The meeting ended at 9pm.

THE NEXT REGULARLY SCHEDULED MEETING WILL BE WEDNESDAY January 6, 2016 AT 7:00 P.M. AT THE TOWN HALL, 300 GLEED AVENUE, EAST AURORA, NEW YORK