

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

April 3, 2019

Members Present: Donald Owens, Chairman
Norm Merriman
Timothy Bailey
David Librock
Douglas Crow
Jerry Thompson (arrived 7:17pm)

Alternate Member: Alice Brown

Absent/ Excused: Laurie Kutina
Richard Glover

Also Present: Greg Keyser, GHD
Liz Cassidy, Asst. Code Enforcement Officer
1 member of the public

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

Don Owens states that Alice Brown will be a voting member this evening.

Dave Librock made a motion to accept the minutes of the February 6, 2019 meeting. Seconded by Alice Brown. Motion carried.

PUBLIC COMMENTS: None

NEW BUSINESS:

Referral from the Town Board for an ODA request for 623 Knox Road, Franklin and Shari Downing as owner/applicant.

Don Owens went out to the site and it looked like there was added fill where the barn is going to be. Was there top soil removed?

Shari Downing yes, fill was added, each layer was rolled and then topped with soil.

Don Owens' concern is that it was done to proper compaction.

Shari Downing states that it was done by Keith Fisher, who is very experienced, and he was very particular in how it was filled, he brought in the rollers and heavy equipment. The fill has been there for almost 2 years.

Don Owens states that it's important for you to have that properly compacted because if you build something, you don't want something to happen in the future that will cost you extra money.

Shari Downing states that Keith was very careful with how he did the job.

Dave Librock asks about the drains to catch water coming from the adjacent property (Kruglov's).

Shari Downing indicates yes the drains will catch the water before it gets to the barn.

Don Owens asks if there will be a house built?

Shari Downing yes, eventually.

Don Owens asks will it be further away from the road, to the South?

Shari Downing yes, it will be about 450' from the corner of Knox. It's included on the smaller map. We were instructed to go to the Zoning Board first (for garage in front of the house), so that's the order we did. The barn placement was decided based on keeping it in A district.

Doug Crow asks how does the frontage on this property work?

Shari Downing indicates we have 33' of frontage but the previous owner of the property got a variance from the 50' required frontage. We are 300' back from the main road.

Doug Crow states that I really like the fact that you have the shared road because one of the reasons you have that frontage requirement is so you don't have a huge cluster of houses, that becomes a safety issue for that many driveways, the fact that you have 3 families potentially using the same (private) road, mitigates that.

Shari Downing states that we did the driveway already, part of the original ODA approval was to put in the 20' wide driveway so that's already done, we have all ROW's staked out.

Doug Crow states that he has not had a chance to get out to look at these properties. Don, you've been out there, do you feel comfortable that it's safe to get in and out of that corner?

Don Owens yes, I am.

Norm Merriman asks if the swale will be where the septic will drain into, when the time comes?

Shari Downing indicates they do not have a septic plan yet, but when the time comes, will probably do whatever the Town wants us to do. The house will be perched on a hill, there is no swale. Septic will be located either in the front or the back. There is quite a bit of distance between the house and the next drop off which is Cazenovia Creek.

Norm Merriman states that I don't see any other swale in the near proximity there that would be a tie in point for you for your sand filter. Just a question/something to think about.

Dave Librock asks, so I am understanding correctly, the zoning is ok for the barn and the Town doesn't have a problem with the building of the barn before the house.

Shari Downing, yes I was told that.

Doug Crow asks so you have a variance to build the barn in front of the house?

Shari Downing yes for building in the front yard.

Discussion by board members and Shari Downing on the location of the opening of the barn.

Doug Crow makes a motion to recommend approval to the Town Board to approve the ODA approval as proposed. Seconded by Norm Merriman.

Upon a vote being taken:

ayes – five

noes – none

Motion Carried.

Informal discussion about the lot split at 718 Jewett Holmwood Rd. Possible code review/code change for minimum lot size and distances.

Doug Crow states that this is not about 718 Jewett Holmwood itself, but more about should we be changing the code going forward?

Liz Cassidy indicates the purchaser found their way around the intent of the code. Bill Kramer recommends some discussion on this to prevent this circumvention of the code because of the sensitivity of the ODA.

Doug Crow states that the thing that bothers me the most is the structure of the parcel. You're creating the 125' frontage without 125' access. The code as it stands says that's allowable. To me, the solution would be to require that the 125' frontage be the whole depth of the property. Any lots that don't meet that requirement would go through an approval. Recommends the width of the frontage should be the whole depth of the property. So if you have that 125' frontage, then you need that 125' width for the whole depth of the property.

Liz Cassidy states, so the whole width of the property, or you'll be a Flag Lot.

Doug Crow suggests the smallest amount of change to solve the biggest problem.

Jerry Thompson comments: this is only the second one that I know of in probably the last 20 years that a situation like this has happened. The architect who owns it happened to figure out they could do this on this lot. The only other one that I know of was one that was done about 10 years ago on Sweet Rd.

Doug Crow states that doesn't mean more people won't figure it out.

Jerry Thompson states that to go through all the hearings, etc. to make a code change is a lot of work for something that's only happened twice in the last 20 years. There are always ways to circumvent things.

Further discussion about ODA.

Greg Keyser asks what's the potential of this happening again? Once one developer figures this out, can this happen again next door and down the road, down the road and so on, and you look at how much open frontage you have. The original intent and purpose of the Zoning code is to regulate the density of development and everything was set up for Rural Residential to keep low density and prevent something like this from happening. And if it does happen, you're supposed to come in for the ODA and have that 3 acre minimum to preserve that rural character.

Jerry Thompson asks how many acres is this piece (on Jewett Holmwood)?

Greg Keyser states 3 ½ but there's 30 acres behind it.

Jerry Thompson states, so they just didn't want to go through the ODA process. Which is another thing I want to talk about is the ODA process.

Discussion on ODA and the ODA process.

Dave Librock states that I went out there, it's a dangerous stretch of Jewett Holmwood, there's a new build right next to it and now they can have a gravel driveway, you'll never get a fire engine

in there. So the Town Board feels they need to make a change, from what I heard they'll have it changed within the month.

Doug Crow states that I interpret it the same way, they're going to make the change. They want to make a change and I would like to have some influence on what they change because I think there are ways to change that are overly complicated and there are simpler ways to make a change. And that's why I was proposing, if you want to make the frontage requirement the width of the lot, all the way back. That will solve this issue, if they want to do exactly this, they'd have to come in for some kind of approval and the few people that have some complex shaped lot, they'll come in to get approval.

Jerry Thompson asks, so what you're saying then, let's say someone has 110' of road frontage, and then it goes back 300' and widens out to 500' wide and goes back another 1,000' or something, that would be an ODA?

Doug Crow states yes because it doesn't have the 125' frontage. But the thing that would have to come in as an ODA would be if the property is 125', then narrows to 110' then widens back out, like an hourglass, that would have to be an ODA but I think there's very few of those and they would just get approved when they come in because it's a minimum change in the width and it's not going to cause a problem with access. This one (the Jewett Holmwood lot) would cause a problem with access. That's why I'm saying if you're going to change the code, make minimal change to the code that would allow for reasonable things to go through.

Jerry Thompson asks what is the driveway width requirement? Is there one?

Liz Cassidy states that's not a discussion we have with property owners.

Jerry Thompson states that you can't try to cover all of the loopholes.

Liz Cassidy states, no you can't but this was very clear from the moment they came in that this was what they were going to do (at the Jewett Holmwood property) because if they were to do this as a typical Flag Lot, with the driveway, they would need a multitude of variances. The lot area for the flag portion, they would need a front yard variance and probably a rear yard variance. That's 3 big asks.

Jerry Thompson states on 2 acres of land for a single family house. I mean, it's their land, you can ordinance things to death too. And the reason for that is after 300' it goes to a different zone, correct? Which changes setbacks?

Liz Cassidy states that no because the second part of that packet talks about, they have the extension of the Rural Residential setbacks, so if you have a lot that continues, you can build in the A (district) and use the Rural Residential setbacks. So that is also something that they

brought up was the fact that you can extend that Rural Residential setback requirement. That was because sometimes people have those long lots and they want to build further back in the woods.

Jerry Thompson states that this is very unusual.

Doug Crow I agree it's very unusual and I agree it probably won't happen very often.

Dave Libroch but you wonder where it's going to go especially in like, how many hundreds of feet of frontage is across from you Norm, now we can start carving that up with all of that property being sold. I look at it as a safety thing, and I'm thinking we would look at this hard as an ODA the way it comes out there, now there are 3 driveways within a couple hundred feet, on a blind spot on Jewett Holmwood.

Discussion by board members on ODA and driveways.

Jerry Thompson states that I think the people in this circumstance took advantage of what they could.

Doug Crow states and they could have satisfied it without violating the spirit but doing it on the other side, but then they'd have to tear down the shed and lose that whole half of the yard.

Jerry Thompson I think it had to do with time, the ODA would have taken a lot more time and the lady was going to lose her house if she didn't get the sale. It was going to be foreclosed.

Dave Libroch states, just from what I heard today, I was told the prospective buyer is, it's a family member that will build a house in the back.

Jerry Thompson I understand that the sale was predicated on this split of the property.

Dave Libroch, like I said, my concern is from a safety standpoint.

Discussion on Emery Rd property splits.

Jerry Thompson asks, so how does the Building Department feel? What do you guys feel needs to be done here?

Liz Cassidy I think Bill's point is that it does get around the intent and the spirit of the ODA code specifically, so in order, the discussion should look at the lot width and having that as part of the definition.

Greg Keyser, so let me ask you this, let's say this was different, the existing buildings were all shifted over to the left a little and they have 125' going all the way back, how does this change the location or concerns, you'll still have the driveway and safety concerns.

Doug Crow states you're still going to have a lot of driveways close together but you can't regulate everything.

So if they have 125' all the way back, presumably they would move their driveway closer to the middle of the lot and we can always make those suggestions. The other part of this is the 50' minimum, not in the ODA section, it's way up in the front but the minimum lot width you're allowed is 50'. He had initially planned on flipping it and having a 50' wide access all the way back and still having this whole project.

Greg Keyser, so if the primary concern is the location driveway is there a provision within the Zoning Code that sets a minimum distance between driveways as they enter the road? That might be a good way to regulate without having to do substantial changes. You have to maintain distance between driveways of 100, 200'?

Doug Crow states that you have to be careful with that because you don't want to turn a whole bunch of lots that people own into non buildable lots.

Further discussion by board members regarding driveways.

Don Owens asks so where do we go from here?

Doug Crow asks do we want to make a recommendation to the Town Board? Or do we not have enough consensus?

Dave Librock, indicates that's what the Town Board is looking for. I'm sure it's going to come up again with the amount of building that's going on.

Greg Keyser states I think the recommendation that's in here that says the minimum lot width has to have the frontage, through the RR back to the A is a good start. This particular scenario could also play out in an R1, R2, R3, or even a business. If there's a lot of development pressure around Town, you're going to have architects, engineers diving into this, figuring something out.

Doug Crow states I will recommend but don't have it tied just to lots that cross multiple zones.

Liz Cassidy discusses 2 parts. One is the minimum lot size, in every district it's spelled out but also in the RR, the frontage and the area are talked about and that's all it says. So you have 125' of frontage and ¾ of an acre, poof, you can build. It talks nothing about that width which is how they got around that. The reason that they can use different setback requirements is because of

that 2nd entirely different section that talks about extending those RR setbacks into an A where you have a continuous property. So if you are going to make a recommendation, it's probably going to look at both of those things. If you're going to add the lot width, you'll have whatever your frontage is because it's less in some other districts (the R1, R2 or R3), those are smaller lots.

Doug Crow states I do not personally have a problem with that part of it. I would only look at the width.

Liz Cassidy, indicates it's 254' from this ROW to this front property line. So this property begins in the RR and moves into the A.

Doug Crow indicates he does not have a problem with the fact that the more favorable of the setbacks is given. It's the width issue that I have a problem with.

Liz Cassidy states as long as that width travels from the ROW, through the RR, into the A, then that all stays. So let's pretend there's no house in the front and they wanted to build back there, then that would be ok.

Don Owns asks if there are any other thoughts.

Greg Keyser states if they have 125' (frontage) they have to go all the way back. That's the issue then.

Don Owens states that and if it doesn't, then the next step is the ODA.

Liz Cassidy states that well currently if you have less than 125' of frontage you're an ODA or you need a lot width variance.

Doug Crow states all of which would require approval.

Liz Cassidy states exactly.

Don Owens asks so what's the consensus of the Board? Do you like this plan, of this map (Jewett Holmwood)? If you go by this plan, you'd have to have the 50' going back.

Liz Cassidy indicates he has a 14' easement.

Greg Keyser asks what is that 50' tied to?

Liz Cassidy states the 50' is minimal width for any lot under Chapter 44-1A Building Permits, "For ingress and egress, each applicant shall furnish proof of a fifty-foot permanent easement or

right-of-way or title to an area at least 50 feet in width for ingress and egress, extending from the public street or highway to the building.”

Jerry Thompson and that’s because of the width of the driveway as well, partly. Never had a 20’ hard pack driveway before the ODA.

Dave Librock, you have the 20’ plus the ROW for the utility corridor, so that adds up.

Jerry Thompson that’s why the 50’ was put in there, right?

Don Owens states yes.

Greg Keyser asks Zoning says 125’ width, you have an ODA that says 50’ and now you’ve got something under Building Permits that says a 50’ minimum so doesn’t that nullify the ODA regulations?

Doug Crow asks if the whole point of the ODA was to give people a way to have less frontage than the 125’?

Don Owens states yes.

Doug Crow states if you don’t have the ODA (code) you have to have 125’ frontage. Yes you have to have 50’ width at some point, it could narrow but you have to have that 125’ frontage. So the ODA gives you an exception.

Jerry Thompson indicates he didn’t quite understand the question.

Greg Keyser, so if you have Zoning that says 125’ width, the ODA that says that you can have an exception to that of 50’ but you have to go through this whole review process and now in the Building Code you have something else somewhere in the code that states 50’, so does that supersede the ODA? I have 50’ of frontage and meet Chapter 44 of the code?

Doug Crow, yes that’s an argument.

Liz Cassidy indicates that a Building Permit cannot be issued without the 50’.

Further discussion by board members on the different sections of the code that reference widths/access/frontage, possible over-regulation.

Jerry Thompson makes a motion to table the discussion. Seconded by Doug Crow.

Upon a vote being taken:

ayes – six

noes – none

Motion Carried.

Don Owens discusses his recent look at the Aurora Mills subdivision. Further discussion by Board members on the Aurora Mills subdivision, retirement housing and affordability/construction & development costs today.

PUBLIC COMMENTS:

Tony Rosati indicates that he's been looking into affordable housing legislation, Supreme Court rulings, conflicts at the state level that show potential for law suits to happen for not properly planning for senior and entry level housing. Discusses possible legal risks in Zoning code, especially with so many large pieces of agriculturally zoned land. How do you make capital but also provide options for affordability? How do we encourage affordable housing?

Don Owens states that part of the problem is it's going to be difficult to provide affordable housing outside of the sewer district. That's the issue in the Town of Aurora.

Jerry Thompson discusses the federal and state regulations regarding building code/requirements and restrictions with financing that make it much more expensive to build affordable housing units.

Tony Rosati encourages the Board to think about what types of projects they want to encourage in the Town.

Doug Crow indicates that at the state level, it's very difficult to allow solar farming in high quality agricultural land, it has to be very low quality agricultural land to be approved by the state. Even if it's not actively being used.

Further discussion by the Board on buildable lots in the Village.

CORRESPONDENCE: none

A motion was made by Doug Crow and seconded by Jerry Thompson to adjourn at 8:40PM.

THE NEXT SCHEDULED MEETING WILL BE WEDNESDAY MAY 1, 2019 AT 7:00 P.M. AT THE TOWN HALL, 300 GLEED AVENUE, EAST AURORA, NEW YORK