

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

May 5th, 2021

Members Present: Donald Owens, Chairman
David Libroch
Jerry Thompson
Douglas Crow
Timothy Bailey

Alternate Member: Alice Brown

Absent/ Excused: Norm Merriman
Richard Glover
Laurie Kutina

Also Present: Elizabeth Cassidy, Code Enforcement Officer
Kevin Glover, Assistant Code Enforcement Officer
Greg Keyser, GHD

Chairman Don Owens presided over the meeting which began at 7:00 p.m. at the Town Hall, 575 Oakwood, East Aurora, NY. He led the recitation of the Pledge of Allegiance to the Flag.

Doug Crow made a motion to accept the minutes of the April 7th, 2021 meeting. Seconded by David Libroch.

Upon a vote being taken:

ayes – four

noes – none

Motion Carried.

PUBLIC COMMENTS: None

Elizabeth Cassidy introduces the new Assistant Code Enforcement Officer, Kevin Glover.

NEW BUSINESS:

Referral from Town Board for review and recommendation of a Special Use Permit, Site Plan and Dwelling Group at 1158 Davis Rd. as presented by Gary (Jake) Dellaneve.

Mr. Dellaneve begins by discussing his plans to build a pole barn that the property.

Jerry Thompson states that he was at the property today to look at the site and asks if Mr. Dellaneve has spoken with Erie County Health Dept. about the existing septic system?

Mr. Dellaneve states that yes, he will need a new septic system for the apartment.

Jerry Thompson asks about the Dwelling Group and confirms that the property cannot be split if there is a dwelling group.

Doug Crow also asks about the septic system. He also refers to Greg Keyser's/GHD's comments. Doug Crow asks if a permit would be required for the septic system?

Greg Keyser states that yes, he will need to apply to Erie County Health Department for a new septic system.

Doug Crow also brings up the suggestion to add some or look at the drainage on the property. He does not agree with the suggestion that Mr. Dellaneve provides a buffer screen for the neighbors. Doug Crow also asks about the storage containers that are currently on the property?

Mr. Dellaneve states that yes there is a storage container and the new barn will go next to it. He also states that he is looking to get rid of it, especially if he builds the new barn he may not need it.

Doug Crow asks if that counts as an accessory structure?

Liz Cassidy confirms that yes, the Building Department permitted it as a shed.

Dave Libroek asks if there is currently a showroom on the property (for the applicant's business)?

Mr. Dellaneve states that no, he does not have a showroom. We have a shop that we store materials in. The new building will be used to store vehicles (for the business) and possibly additional materials.

Dave Libroek asks if Mr. Dellaneve plans to have a storefront there in the future.

Mr. Dellaneve replies that he has no plans for a storefront at this time.

Don Owens reiterates (referring to comments from GHD) that storm water management and drainage plans be provided.

Greg Keyser states that he is recommending the drainage plan. There is no ditch in front of your property, it was not clear to how the storm water was going to get to the ditch to the south of your property and you cannot discharge that water onto your neighbor's property.

Doug Crow states that the neighborhood/area has drainage issues.

Greg Keyser reiterates that Mr. Dellaneve should revise that and provide that information as to how he is going to manage the storm water and get it to the ditch.

Mr. Dellaneve acknowledges.

Jerry Thompson moved to recommend approval of the Special Use Permit, Site Plan and Dwelling Group application(s) at 1158 Davis Rd. as presented by Gary (Jake) Dellaneve, as presented, with the following conditions:

- 1. The property cannot be split in the future**
- 2. Storm water/drainage be discharged properly**
- 3. Subject to Erie County Health Dept. septic approval for the second dwelling/apartment**

Seconded by Douglas Crow.

Upon a vote being taken:

ayes – four

noes – none

Motion Carried.

Referral from Town Board for review and recommendation of an ODA application (with variance) at 535 Jewett Holmwood Rd. as presented by Robert and Joan Erickson, property owners.

Mrs. Erickson discusses the property they own. They plan to split the property and give the property with the existing house to their son and they will build on the lot in the back.

Jerry Thompson states that he was at the site earlier in the day and asks about the front yard setback variance?

Mrs. Erickson states that there are no wetlands but because the property is quite wet in the back, it was suggested to them they place the dwelling closer to the property line.

Jerry Thompson discusses the driveway and drainage issues on Jewett Holmwood Rd.

Mr. Erickson states that the culvert pipe at the new driveway will be the same as to what the existing driveway has.

Jerry Thompson asks if they have any issues with the storm drainage with that pipe?

Mr. Erickson confirms that they do not currently have any issues with it and will make sure the pipe is large enough.

Mrs. Erickson states that the pipe was sized (Erie County Highway?) properly.

Dave Librock discusses the properties in the area and how the drainage seems to not be an issue (at the road). He also states that the property gets lower in the back.

Mr. Erickson also states that they could place the house even further back past the low spot but they do not want to have to put a sprinkler system in (because it will be past the 750' requirement).

Mrs. Erickson asks about the 20' wide driveway requirement.

Doug Crow answers that the width requirement is for emergency vehicle access. It is a newer regulation.

Jerry Thompson states that when this Zoning Code/ODA code was done, the driveway access was revised for several reason. One reason was because of the flag lots on Sweet Rd., there are 5 dwellings on one private driveway/road and the road is too narrow and curvy for emergency vehicle access. It could become a liability for the Town if you can't get an emergency vehicles to the dwellings.

Mr. Erickson asks about the pull offs/bump outs.

Doug Crow answers that some of those regulations are State regulations or recommended by the State. The purpose of the required bump outs is so that if there is a large fire back at the dwelling, multiple emergency vehicles may need to pass each other and get in and out.

Multiple board members reiterate the safety requirements (width, bump outs and required turn-around).

Doug Crow asks Greg Keyser about the SEAF item # 3b, total acreage to be physically disturbed is marked as 4 acres.

Mr. Erickson states that is not true (they are disturbing less than that).

Doug Crow states correct, you are not disturbing that many acres, so that will need to be revised. Identify just the property that will be disturbed. If that equals over an acre, there are more requirements (SWPPP)

Mr. Erickson asks for the definition of "disturbed"

Greg Keyser states clearing vegetation, moving soil (area of the house and driveway most likely). There is a lot of natural drainage in that area and so the more you disturb, the more there is potential for a greater impact.

Discussion about drainage in that area, nature of the properties.

Doug asks about Greg's comment regarding County Highway permit?

Greg answers that there is currently a 12" storm drain pipe that runs east and west at the driveway (not shown on plan). That's Erie County Highway drainage, they own, run and maintain that. I would recommend that they show that on the plan and the property owner work with them for that.

Doug asks if anyone else has comments in regards to the front yard setback?

Jerry Thompson states that he thinks it's so far back that there isn't an issue with it.

Dave Librock agrees that in this case he doesn't see an issue with it.

Greg Keyser reiterates that there is a lot of natural drainage further back on the property and if the house was built further back there could be a much higher impact. That would all need to be addressed. Greater impact on the property owner and the natural drainage there.

Douglas Crow moved to recommend approval of the ODA application at 535 Jewett Holmwood Rd., as presented, with the requested Front Yard Setback variance with following condition:

- 1. Subject to applicant verifying the total acreage to be disturbed and updating the Short Environmental Assessment Form (Part 1 #3) to reflect correct acreage (based on GHD's comments)**

Seconded by Jerry Thompson.

Upon a vote being taken:

ayes – four

noes – none

Motion Carried.

Referral from Town Board for review and recommendation of an ODA application at 1875 Boies Rd. as presented by Keith Marquis, property owner.

Mr. Marquis begins by explaining his application. Plan to build a 1700-1800 square foot single family residence. Driveway will be 720'-730' from the road. Grade change for driveway should be 5.5-6% grade change. In the future there may be a pond and will include a dry hydrant for fire safety. We've included the required bump outs at the driveway and turnaround. Still working out the configuration of the turnaround at the house, it may change slightly from the included plan.

Jerry Thompson asks about the number of splits on the property in that area.

Mr. Marquis states that the property splits in that area won't affect him but may affect others in the future regarding building.

Liz Cassidy states that Mr. Underhill's parcels are what's in question. Mr. Marquis' property will be lot #3, there would only be 1 more allowed for building permit issuance after this one.

Discussion on the subdivision in that area and the requirements (4 permits in 3 years, etc.)

Douglas Crow moved to recommend approval of the ODA application at 1875 Boies Rd., as presented, with following condition:

- 1. Subject to revision of the Short Environmental Assessment Form (based on GHD's comments)**

Seconded by David Librock.

Upon a vote being taken:

ayes – four

noes – none

Motion Carried.

Referral from Town Board for review and recommendation of an ODA application at 1043/1045/1047 Willardshire Rd. as presented by Eric Morrow, property owner.

(for this conversation, the properties are referred to as "lot 1", "lot 2", "lot 3" and "lot 4" as they are indicated as such on the Site Plan that accompanied the application)

Mr. Morrow introduces Kevin Johnson, his real estate agent. He discusses the history of the property and the fact that it was owned by his father since the mid 1990's who recently passed away. Mr. Morrow is planning to sell the three properties. Mr. Morrow explains that the lots were created in 2004 (all three plus a fourth, the farthest property from the road, which is owned by Mr. Skalski.) The lots created in 2004 pre-date the existing ODA code as it stands today. Mr. Morrow is looking for some relief from the ODA code because the lots were created prior to the current ODA code. He is also looking for two variances for "lot 3" (lot area and front yard setback.)

Mr. Morrow goes on to explain that "lot 1" (closest to the road with road frontage) needs a lot line modification because it was originally created by the area being measured from the center line of the road rather than from the Right of Way like it's supposed to.

Doug Crow clarifies that the lots were divided from one lot to four lots, three being retained by ownership of Mr. Morrow's father, and the other one was sold in 2004?

Mr. Morrow confirms, yes.

Jerry Thompson states that he thinks the Planning Board has looked at this property three times. There was an approval within the last couple of years?

Elizabeth Cassidy states yes, a couple of years ago to give the Skalski's, who own "lot 4" approval to build (a residence.) They needed a variance for the front yard setback also and ingress/egress easement.

Jerry Thompson asks why the lot line variance is required on "lot 1?"

Mr. Morrow explains that there is no variance required on "lot 1." The lot lines need to be modified to make the lot at the road a buildable lot with the correct acreage. This will make "lot 2" even less conforming, with slight acreage being taken to add to "lot 1." This allows "lot 1" to have the required three quarters of an acre and allow it to go through Erie County review for septic system approval much more smoothly than having less than that (which according to EC Health Department is very challenging.)

Mr. Morrow explains the variances needed for "lot 3." The property, not including the "flag pole" portion is approximately two acres. Asking for the front yard setback variance would place the potential home at about the midpoint between the two existing houses (on "lot 2" and "lot 4.") Mr. Morrow would like to have the approvals in place in order to boost selling potential.

Don Owens asks if there is possibility of merging "lot 3" with "lot 4?"

Mr. Morrow states that he does not own that property so he cannot merge them.

Jerry Thompson discusses a recent ODA application that would have required variances and asks how the Town Board handled that recent application.

Liz Cassidy states that the recent ODA application that the Planning Board recommended the Town Board not approve (ODA application on Jewett Holmwood from late 2020/earlier in 2021), has not been back to the Town Board and therefore has not been approved yet. She

reiterates that that particular application is different because they were trying to create a new lot whereas this application (Willardshire) is trying to get approval to build on an existing ODA lot that was created prior to the ODA code.

Jerry Thompson asks for clarification on why “lot 1” needs more acreage.

Liz Cassidy reiterates that in order to sell the lot as a legal buildable lot, it needs the required three quarters of an acre (as measured at the Right of Way NOT the center line of the road.) The county will not issue a permit for septic approval with a lot that includes area to the center line of the road. The issue is the current lot (“lot 1”) is not buildable; from the Town standpoint because the area is sub-standard and from the (Erie) County standpoint because it is sub-standard.

Jerry Thompson asks what the remedy can be?

Liz Cassidy explains that the first remedy would be to contact Erie County to see if they would be receptive to issuing a septic permit on an existing (lot of record) that is not standard size. Mr. Morrow spoke with Erie County Health Department (Jennifer Delaney) and they were not in favor of that. The second option is to take some of the land from “lot 2” to make “lot 1” a legal conforming building lot.

Don Owens asks if that is doable?

Jerry Thompson asks if the County will accept that?

Liz Cassidy states that yes, if land is combined to the first lot (a boundary line adjustment.)

Doug Crow states that it makes “lot 1” buildable but makes “lot 2” (which is already substandard size for an ODA lot) even less acreage and “lot 3” is under the three acre requirement. So that is really the issue. The recommendation from us is really approving lots 2 and 3 as substandard size to build on.

Jerry asks if the lots were approved prior to this?

Liz Cassidy states that no, they were not approved, only “lot 4” was approved as a buildable lot a few years ago. She explains that you can divide the property however you want but it doesn’t necessarily make it a *buildable* lot.

Doug Crow states that he is struggling with this application because the code was changed specifically to prevent this structure. According to the current code, this is a three lot structure. If you get rid of “lot 1”, combine it into “lot 2” and change the boundary line between “lot 2” and “lot 3”, you can make those both combined. You can do that, it’s possible to do that under the current code. That is what the current code contemplates and that is what should be done without exceptions. The Town created the code because it doesn’t want really small flag lots. The other thing that would be discouraged today would be three driveways right next to each other. Have a shared driveway (for safety.) That is the issue, is the Planning Board in favor of the exceptions in order to make (“lot 3”) buildable?

Jerry Thompson states that you make those decisions and it sets a precedent. This one is a little bit different because it was already existing. It changes things.

Dave Libroch states that this application is similar to one that was approved on Lapham Rd. (inadequate in acreage requirements.) The Town Board consensus there was that since the lot was existing it was grandfathered in and approved it.

Mr. Morrow appreciates that the lots were subdivided years ago and the intent at the time was to follow the code, which it did for that time.

Doug Crow states that that's the problem with code changes. The reason for the changes was to prevent small flag lots, and to require proper access. The density and safety would be an issue. Doug Crow states that he was here through the process of the code change and these were all things that were discussed at that time. There are a lot of large parcels between roads in the Town and the solution (rather than subdivisions and new roads) is to allow people to build on a flag lot. However if you allow flag lots, there needs to be a limit as to how much you flag lot and this was what the Town decided on.

Dave Libroch states that he understands Doug's standpoint but also on the other hand, are we penalizing someone even though the property was already set up that way? He also wonders how many are out there that currently exist.

Liz Cassidy states that there are probably a lot throughout the Town that exist at a substandard size to today's ODA code. The previous ODA code acreage requirement was three quarters of an acre. When this lot was created in 2004 there was no ODA code, which was originally created in 2006/2007. So this is a generous size lot when you think of it in regards to the previous ODA code. It is undersized to today's code but the history of the property comes into play a little bit.

Doug Crow asks what is involved to move lot line, is it a big deal to get it done?

Mr. Morrow states surveyor layout, legal description. Easy if you are the owner of both properties.

Jerry Thompson explains that it is a complicated issue and he doesn't want to set a precedent. He doesn't have a problem with the four lots in the first place. He understands the county and they used to include to the centerline of the road but then they changed the requirement, it needs to be measured from the Right of Way now.

Doug Crow believes there is a reasonable argument either way (to recommend approval and to not recommend approval) and is still deciding which side of the argument he is on.

Jerry Thompson asks from a realtor's point of view, if you have two nice lots that are acceptable to the Town and can be built on right away with no issues, you can get more money for those lots, especially today. From a monetary point of view, as opposed to selling the property as three lots, how do you feel about that (directs question to Mr. Morrow's real estate agent Kevin Johnson)?

Mr. Johnson agrees that if they are buildable they would be worth more. He thinks the objective is to understand what all of the options are so they can list it correctly and market them accurately. It does seem reasonable that the person who purchases "lot 2" (currently has a dwelling) may want to purchase "lot 1" as well.

Jerry Thompson reiterates that from a real estate agent point of view, taking the location into consideration and the quality of houses that people are going to build in the area, they probably will want to have more of a buffer, more property there. Therefore if there were two good quality lots, you could get more money for them. As opposed to selling them as three lots which you may have a harder time doing.

Mr. Morrow asks to clarify. One buildable lot and one existing (lot with a house) would have similar value to one existing lot and two buildable lots?

Jerry Thompson states that because the current lots do not meet the current code, if you could combine the three lots into two lots, so they both meet the code then that solves the problem and you could probably get more money for them. Because of the size of the lots, the location and the type of house that would be built there.

Mr. Morrow states that on paper making two lots is not very favorable. Our intent when we split them in 2004 was to create three lots.

Don Owens asks if Mr. Morrow would like to reconsider and come back.

Doug Crow asks about Greg Keyser's comments.

Greg Keyser states that under the ODA code the approval/creation of more than one ODA lot requires the Full Environmental Assessment Form. That's not what is happening here, so this application doesn't need the full form. The request/proposal from Mr. Morrow is lot line adjustment and relief from the ODA standards. Whatever the Planning Board recommends tonight, include the SEAF is adequate.

Mr. Morrow states that he has a letter from the Town from 2004 that specifically states that "lot 1" is in compliance and is buildable. The letter makes two mistakes. One being the survey is from the center line of the road and the author (Pat Blizniak) didn't recognize that. The second mistake is the letter doesn't connect the survey of that date to the letter. So someone could say that they don't know what survey the letter speaks to. So we are adjusting "lot 1" to be buildable.

Doug Crow states that we are not here to discuss "lot 1", we are here to make a recommendation on "lot 2" and "lot 3" (the ODA lots).

Liz Cassidy states that unless your recommendation is to absorb "lot 1" into the other lots.

Doug Crow explains that if the application is not approved as is, a way to solve it is to merge those lots.

Mr. Morrow reiterates that he does not need relief from "lot 2."

Doug Crow states that correct, there is a house there so you don't relief from that one because there is already a house there.

Liz Cassidy states that is correct, “lot 2” is a legal non-conforming lot according to today’s ODA code and the redrawing of the lines between “lot 1” and “lot 2.” The change really isn’t impacting the property as it is, the house and garage are still there, so it’s going to stay the same. So you could give relief to that ODA lot as an exception or you can leave it as is.

Doug Crow understands and explains that we don’t need to approve an ODA variance for “lot 2.” We also don’t need to approve the lot line changes (between 1 and 2) because it doesn’t have any material effect. The question for the Planning Board then is do we approve “lot 3” as a buildable lot with an exception to the ODA code for both setback and lot area.

Discussion on the size of houses being built in the Town currently.

Doug Crow again states that he would not feel comfortable recommending approval for the ODA exceptions for “lot 3.” He feels it was buildable when it was split but changes in the code make it not buildable at this time. The issue can be solved by re-dividing the property. Yes there would only be two lots to sell then but I don’t think that’s a reason to approve the variance (for “lot 3”).

Discussion by board members about road frontage.

Douglas Crow moved to recommend the Town Board does not approve the variances for “lot3” as proposed.

Seconded by Jerry Thompson.

Upon a vote being taken:

ayes – two

noes – three

Motion failed.

Jerry Thompson moved to recommend the Town Board approve the variance as per the request for “lot3” as proposed.

Seconded by Doug Crow.

Upon a vote being taken:

ayes – three

noes – two

Motion carried.

May 7th, 2021: this vote was not valid because there was no majority vote to pass.

Jerry Thompson states that now it’s up to the Town Board to make the decision.

OLD BUSINESS: None

CORRESPONDENCE: None

A motion was made by Jerry Thompson and seconded by David Librock to adjourn at 8:13 pm.

THE NEXT SCHEDULED MEETING WILL BE WEDNESDAY JUNE 2ND, 2021 AT 7:00 P.M. AT THE TOWN HALL, 575 OAKWOOD AVENUE, EAST AURORA, NEW YORK