

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

May 12th, 2021

Members Present: Donald Owens, Chairman
David Librock
Jerry Thompson
Douglas Crow
Timothy Bailey
Norm Merriman
Laurie Kutina

Alternate Member: Alice Brown

Absent/ Excused: Richard Glover

Also Present: Elizabeth Cassidy, 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.

PUBLIC COMMENTS: None

Re-vote for the 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.

Mr. Morrow begins by explaining the history of the property splits. He also explains that lot #3 requires a lot area variance because it is less than the required 3 acres (1.97) and a front yard setback variance in order to place a future dwelling in an ideal location on the property. Mr. Morrow states that he is open to comments and suggestions in regards to moving the lot line between lot #2 and lot#3.

Jerry Thompson questions how the Board feels about the letter that was sent by the neighbor (Mr. Skalski) at 1049 Willardshire Rd. He also brings up Dick Glover's comments as he was not able to be at the meeting. Jerry believes Dick has an interesting observation in regards to variances.

Greg Keyser states that there are some things to consider. The Town ODA code was adopted in 2006, updated in 2017. These lots were formed prior to the adoption of the ODA code in 2006. The other thing to keep in mind is that development has begun on those lots (the SFH at 1049, or "lot 4"). The applicant is asking for relief now. The standards have changed and there is no guaranteed right to be able to build there. He also suggests to keep all of these items in mind and the fact that the purpose of the ODA code is to ensure access for fire and emergency vehicles and

to maintain the rural character of the Town. He reiterates that the question should be raised “can the rural character of the Town be maintained if these lots were developed with the variances that are being requested?” The third point is that there is nothing stopping anyone from subdividing property any way they want to right now and you could have additional people in front of the board asking for variances, etc. so does that set a precedent. There is no clear cut reason (from an engineering standpoint) as to why these lots could not be developed. It comes down to planning considerations, what is reasonable, when the code changed vs. when the lots were formed.

Laurie Kutina brings up the definition of “subdivision” and that back in 2004 the discussion was brought up that 4 or more lots would be considered a subdivision and would require that thorough process. Was that changed in 2017?

Liz Cassidy reads the definition of Subdivision from the Town Code.

Discussion about why the ODA code was adopted.

Laurie Kutina states that the property is beautiful but there are safety and preservation considerations, the 4th lot (in the back) was purchased with the knowledge, unspoken or not, that they wouldn't have 3 houses in front of them and it pushes what the ODA rules were meant to preserve. The number of 4 lots was a big deal (when the code was being discussed) with what the ODA code was trying to protect and having 4 driveways come out from a 1 lot division was not what was intended when the code was put together. The frustration is understandable; a property can be divided then when it comes time to build there are limitations and things change. She doesn't think this (development) should happen (as presented).

Don Owens brings up the lot sizes as an issue.

Doug Crow discusses his perspective that lot #4 is already built on as well as lot #2, lot #1 can easily be made to a conforming lot size with a small boundary line adjustment. So really lot #3 is the lot in question. He is less concerned with the setback issue. He does not believe that lot #3 should be approved to be built on without adjusting it to the full 3 acre requirement. It can be done, it would take up all of the land between the 2 existing houses but I would recommend that asked to be done to make it a buildable lot. I recommend sticking to the 3 acre requirement.

Jerry Thompson asks about the Short Environmental Assessment Form (SEAF). Looking at description of proposed action talks about lot #1 and lot #3.

Elizabeth Cassidy responds that yes, because lot #1 as it stands today is not buildable because it lacks the (required) $\frac{3}{4}$ of an acre outside of the Right of Way.

Jerry Thompson asks if that is a consideration for the Planning Board?

Liz Cassidy states that not really, really you are focusing on lot #3 and the variances required in order of it to be approved as an ODA.

Mr. Morrow discusses the topic of the boundary line. He is an architect and by the numbers this is an easy decision as in it does not work. By experience, it (the property) looks beautiful back there, a delightful place to live. If I owned either the existing house or the new build, where would I want that boundary line to be? Making lot #3 2.5 acres will place the boundary line right in the middle which would make the most sense. If it's pushed to 3 acres, it is doable, does not

interfere with the septic of lot #2, but it ends up being awkward (because it's closer to the existing house.) It's the numeric decision but not the right one.

Doug Crow states that the buyer of those properties will know that when making the purchase. It may affect the desire to purchase those properties. Doug feels that if too many exceptions are made, it weakens the ability (of the Boards) to enforce the exiting ODA code.

Mr. Morrow discusses that he's not sure how many like this (already sub-divided property) will be coming in the future? The scale of relief if 2.5 acres, therefore asking for less than 17% relief. If this is a discretionary process, then I think this is a suitable request. If it's 3 acres or nothing, then I don't know what we're doing here.

Jerry Thompson brings up the neighbor's letter. A few years ago they requested to move the house forward. If it was placed back further then it wouldn't have much of a visual interference.

Laurie Kutina brings up the purpose of the ODA. On a whole there is a reason we have these rules and it's something that should be considered.

Discussion about when the first house was built (lot #2 by Mr. Morrow's father) and why he split the property the way he did. Mr. Morrow states that he is not in favor of how his father divided the property but his father wanted more property.

Mr. Morrow also states that in regards to the rural character, the lots are longer than they are wide which means the space between the houses is pretty great (between 250'-350'). It is generous spacing.

Further discussion on whether or not lot #1 is considered in this discussion. With a boundary line adjustment on lot #1 it becomes a buildable lot and get can a permit.

Liz Cassidy discusses the requirements for a "regular" (road frontage) building lot. The boundary line change between lot #1 and lot #2 is making lot #2 even more less compliant but it is an immaterial change for that property. But it does make a material change to lot #1 that will make it a buildable lot (required for septic approval).

Jerry Thompson states for clarification that lot #4 is not part of the discussion and asks if all of the lots are already separated, have their own legal descriptions, etc.

Mr. Morrow confirms. All of the boundaries on the site plan are existing. There is only discussion on adjusting the boundary at lot #3 for some potentially good reason is a discussion point.

Jerry Thompson states that it's a difficult decision. If you improve lot #3 to make it larger, then you are making lot #2 even less compliant with current code.

Laurie Kutina states that this is a textbook case of a lot of the longer decisions that the Planning Board had discussion on. You can sit here and play with numbers until they fit but the point is that I think we were trying to avoid if you have properties like this that are right for a subdivision but not for an ODA application. Unfortunately there just isn't enough room for that.

Mr. Morrow states that the intensity of the use doesn't change (intensity of use, traffic, utility use), so I don't understand the concern over intensity of use increasing because it's the same intensity.

Discussion on the neighbor's letter. Outcome is the same whether the size is substandard with a variance or required to be the 3 acres.

Doug Crow states that he has concerns but there isn't anything we can legally do to address the concerns of the letter.

Mr. Morrow states that equitable lot size between the existing lot size and that he would prefer not to make it the required 3 acres. Discusses working together for a favorable outcome.

Doug Crow states that he feels that lot #3 should be the required acres, then making lot #1 part of lot #2 so they have extra space in the front. It all depends who wants to buy it, lots can be listed separately then someone could choose to buy both (for the space). I understand your desire to want to make them all buildable so it maximizes your buyers. However the real issue is what we as a Planning Board want to recommend.

Dave Librock states that he can see the Town Board looking at it that there are 4 total houses in that location, if there were 3 lots proposed that may be preferable (includes the 4th lot at 1049)

Mr. Morrow states that 4 is the limit of intensity that is prescribed as allowable. I'm not looking for additional intensity, I am looking for geometric relief within the rural character of the area.

Laurie Kutina agrees with Doug's point. Even if lot #1 becomes a legal buildable lot, it is not a desirable lot. Having 4 driveways in the location is difficult. Requiring the 3 acres will put some pressure on the fact that lots #1 and #2 might be sold together instead of being separated out. Maintaining the 3 acres for lot #3.

Mr. Morrow states that lot #1 will be available to the buyer of lot #2, you can be sure of that. He also reiterates the level of intensity (traffic, development, utilities), it's within the limit of the flag lot system that was created and approved in 2017.

Doug Crow states that there could be 4 separate driveways. There could be a shared driveway.

Laurie Kutina states that there have been disagreements between owners of current ODA lots (throughout the town). Agreements and Easements can become point of issues between neighbors. Something to consider as well.

Mr. Morrow reiterates and discusses that the plans meet the intensity and character requirements but just lack the geometric requirements.

Doug Crow reiterates that the ODA code is specific to this Town. Every town is different and has different requirements.

Norm Merriman brings up the driveway.

Doug Crow answers the driveway is on both properties. Usage agreement for all lots to use the 1 driveway.

Further discussion about the driveway and usage of the driveway.

Dave Librock asks about where utilities for lot #3 would come in.

Mr. Morrow discusses the utilities easement and the utilities for the existing house on lot #2.

Mr. Morrow also discusses the shared maintenance agreements are on all 4 properties when the title search was completed.

Douglas Crow moved to recommend the Town Board approve lot #3 as an ODA if the boundary line is adjusted between lot #2 and lot #3 to expand the size of lot #3 to (the required) 3 acres. If the requested setback (front yard) variance is still needed after the boundary line adjustment, the board recommends that be approved as well.

Seconded by Laurie Kutina.

Upon a vote being taken:

ayes – seven

noes – none

Motion Carried.

A motion was made by Don Owens and seconded by Laurie Kutina to adjourn at 7:44 pm.

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