

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

September 4th, 2019

Members Present: Donald Owens, Chairman
Laurie Kutina
Douglas Crow
David Librock
Jerry Thompson

Alternate Member: Richard Glover

Absent/ Excused: Norm Merriman
Alice Brown
Timothy Bailey

Also Present: Elizabeth Cassidy, Assistant Code Enforcement Officer

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.

Jerry Thompson made a motion to accept the minutes of the August 7th, 2019 meeting. Seconded by Doug Crow. Motion carried.

PUBLIC COMMENTS: None

OLD BUSINESS: None

Referral from Town Board for a proposed change to the number of dwelling units from 46 to 47 at the Polo Grounds condominiums as presented by Frank Chinnici (of Legacy Development) and John Garas (attorney for Frank Chinnici).

Mr. Garas begins by introducing himself as Frank Chinnici's attorney and briefly discusses the Polo Grounds as a cluster development.

Mr. Chinnici begins to discuss the history of the subdivision. The impasse that we ran into was (mixed single and double units) that the double units were just not selling. So we approached the Town Board to amend the combination of singles and doubles. The Town Board has been adamant that we stick to the numbers that were originally calculated for singles and doubles. So we proposed a change to that mixture. Litigation ensued and as a settlement to that litigation, we

agreed to a new combination of singles and doubles but that resulted in only 46 total units. The reason we agreed to that then was because we still had 25 units to sell so the 47th unit just didn't matter at that point. My role as a sponsor, I pay for one common charge for every unsold unit. Even after we changed the overall total density to 46 units, I've been paying common charges for the 47th unit in the hopes that we would one day revisit this. Fast forward to today where we are down to the last couple of units.

Doug Crow asks how many units are actually build right now?

Mr. Chinnici indicates to the most recent as-built plan. There are 44 units. 22 single units and 11 2-family units.

Doug Crow asks so there are 2 units you still need to build and you want to build 3?

Mr. Chinnici states that as far as the Attorney General is concerned (approved the condominium) there are 47 houses (dwelling units) and until that changes, we have to continue to pay for that 47th unit, which we've done for the past 6 years now. We're at the end, the current homeowners and us would like to wrap this up. One of the issues is if this 47th unit doesn't get approved, they're going to owe me about \$19,000 in common charges, plus going forward, they'll have to spread their costs out over 46 units instead of 47. Back to the history of it, we asked for a change of singles and doubles. Right now we are allowed to build one (1) 2-family home on Cheval, I could pull a permit for that right now. So we would like to add the 47th unit (single family) now and wrap this thing up.

Mr. Chinnici indicates his view is 47 houses, whether they are joined or set apart, doesn't change the number of people living there, the number of rooftops and impermeable surfaces, any of the impacts that are typically thought about when we think about density. It's a distinction without a difference.

Jerry Thompson if I'm not mistaken, a cluster development is the number of units is consistent with single family residences, determined based on square footage.

Doug Crow states that when Aurora Mills was first proposed, the number of units was based upon how many single family homes, with appropriate (required) setbacks could you fit on the entire lot, and that's what determined the number of units.

Mr. Chinnici states that would be the as-of-right plan. We determined the as-of-right plan that would be approved under the existing zoning (R2). That's what we did, showed the Planning Board, 47 units based on singles and doubles. The density was established that way. The (New York State) ordinance states that once you establish that density the Planning Board has complete discretion (to make a decision), we have the Memorandum of Law that states that.

Elizabeth Cassidy states that the Town of Aurora has not enacted that state ordinance, making the Town of Aurora Planning Board is advisory only.

Mr. Garas states that he understands the position and he doesn't want to get into any arguments. The issue is, first, does the Town, is it legal for the Town to change the number of units and the second is should they allow the 47th unit. We feel the answers are yes on both issues.

Mr. Garas reviews the State Memorandum of Law that was included with the application packet.

Mr. Chinnici reiterates that the Planning Board has the discretion to distribute the units in any way it saw fit, provide that it fit within the R2 zoning. We've felt from day 1 that the idea of "being handcuffed" to the (exact) number of singles and doubles was misplaced.

Doug Crow indicates that he understands the situation as the original as-of-right plan does state the number of units as 47. Looking back at the history, the Town is wedded not to the as-of-right number but they are focused on the assumed square footage of the as-of-right plan, using the 16,000 square feet) per single, 20,000 (square feet) per double. They are focused on not wanting to increase the square footage and that is where the resistance comes from.

Mr. Chinnici clarifies that the 16,000 and 20,000 sf is land area. So that's already been changed though because the number of singles and doubles changed. But let's get back to the big picture here, we're ready to wrap this up. If we can't build the 47th unit, we're just going to leave. And everyone who is there can just deal with it. I've been at this for 14 years trying to sell these 47 houses and at some point I've got to say, this is it.

Mr. Garas states that in 2014, when I was not involved, the number of units wasn't an issue. The mindset today, however, is that their (the Town Board) hands are tied.

Discussion by the board members and applicant regarding the Town Board meeting (August 12th)

Dick Glover reiterates that the Planning Board is advisory and it was referred to the Planning Board today because they would like our recommendation.

Mr. Chinnici would like to reiterate one more thing. The homeowners want to have the 47th unit to split the common costs with. One of the things the Town Board has been adamant about is what the home owner's expectations were when they bought?

Mr. Chinnici discusses the walking path that was part of the original plan and expectations from the homeowners.

Mr. Garas states that (originally) the Town Board determined 47 units could be allowed, the parcel of property is large enough. And that's all we're asking for. We're asking for a positive recommendation from the Planning Board for that 47th unit.

Discussion by board members and applicant regarding the State and Town cluster development ordinances.

Dick Glover states that the Polo Grounds was worked out to accommodate the 47 units, back when it was started.

Mr. Chinnici reiterates that the practical reality is that is the 47th unit going to really impact residents of the Town other than the people who already live there (in Polo Grounds) who will be getting what they expected?

Dave Libroek asks for clarification on the proposed map, does (the unit shown in the middle on Cheval) stay as a double? I thought you wanted to get away from doubles?

Mr. Chinnici answers yes, in order to make it more palatable to the Town Board, we're willing to keep that as a double to limit the density issue, so we're just asking for the additional single. As a compromise, even though we'd rather have 3 singles here.

Discussion regarding neighboring properties on 20A (Quaker Rd.).

Don Owens asks if there is any further discussion?

Doug Crow bring up the recommendation by GHD.

Laurie Kutina states that the resources are there, it seems like a logical use of the space in terms of planning, I don't think there are any reasons that we would have a problem with it. Reading Greg's (GHD) recommendation, I believe you need to go to the Zoning Board to get the variance.

Doug Crow indicates that he sees no reason not to recommend the 47th unit. However, because the previous change (most recent) went through the Zoning Board, I think we should recommend that it goes to the Zoning Board for approval. The Zoning Board

Elizabeth Cassidy reiterates that it's a similar request to the previous request (that went through the ZBA). The buildable area is changing, so in order to have a larger buildable area number, it can be approved by the Zoning Board (as an area variance).

Mr. Garas clarifies so the issue isn't singles vs. doubles, the issue is the buildable area, the square footage?

Doug Crow states that for me, the 47th unit is still within the original as-of-right number and that's the important point from a planning point of view.

Frank Chinnici indicates that we're not expanding the area of building (outside of where originally planned).

Laurie Kutina states that it's a technicality of the difference between buildable square feet (from 592,000 to 608,000 sq. ft. per GHD's letter). That's what you are asking for, the Zoning Variance.

Mr. Chinnici asks if it matters if it was referred (to the Planning Board) by the Town Board?

Discussion by the Board members on how to make the recommendation and where to refer to from here.

Doug Crow reiterates that there was a change in 2014 in the buildable square feet. The resolution from the 2014 Zoning Board meeting states 46 units and now you're asking to go back to your as-of-right number of 47 units by adding a single unit. It's appropriate to go through the Zoning Board for approval because of that area calculation, for an area variance, like you did in 2014.

Chairman Don Owens makes a note that he will abstain from voting and commenting on this agenda item because of his past involvement in the project.

Laurie Kutina notes that the Planning Board is in agreement to recommend the approval of the revised plan for the Polo Grounds condominiums as presented, for 47 dwelling units, which was the original as-of-right number of dwelling units, as it meets the goals of the Planning Board.

However, because of a change in buildable area square footage and based on the recommendations from Greg Keyser at GHD, Laurie Kutina moved to recommend the project be referred to the Town Zoning Board of Appeals to grant an area variance for the change in buildable area.

Seconded by Doug Crow.

Upon a vote being taken:

ayes – five

noes – none

Motion Carried.

CORRESPONDENCE: None

A motion was made by Dave Libroek and seconded by Laurie Kutina to adjourn at 7:47PM.

THE NEXT SCHEDULED MEETING WILL BE WEDNESDAY November 6th, 2019 AT 7:00 P.M. AT THE TOWN HALL, 300 GLEED AVENUE, EAST AURORA, NEW YORK