

MINUTES OF A HEARING AS HELD BY THE
ZONING BOARD OF APPEALS OF THE
TOWN OF AURORA

February 16, 2023

CASE #1427-Dan Faes a/a/f Edit Dusty Marsh
139 Castle Hill Road, East Aurora, NY

The hearing was called to order by the Chairman Paul Ernst with the following Board members present:

Davis Heussler
Nancy Burkhardt
Rod Simeone
Stephanie Morgan, Alternate

Excused: Mandy Carl

Others Present: Paul Kielich, Assistant Code Enforcement Officer

The notice of public hearing was read by the Deputy Town Clerk. The notice was duly published in the East Aurora Advertiser as evidenced by the Affidavit of Publication, marked as exhibit 1. The Affidavit of Posting was marked as exhibit 2. The ZBA Application was marked as exhibit 3. The Petitioner's Letter of Intent was marked as exhibit 4. The Building Department Letter of Determination was marked as exhibit 5. The ECDP Form and Response was marked as exhibit 6. The Copy of the Survey was marked as exhibit 7. The Short Environmental Assessment Form was marked as exhibit 8. The Aerial View was marked as exhibit 9. The Proposed Front and Rear Elevation Sketch was marked as exhibit 10. The Proposed Floor Plans were marked as exhibit 11. The Copy of the Deed was marked as exhibit 12. The List of the Abutting Property Owners was marked as exhibit 13. Eight (8) Letters of Objection/Concerns were marked as exhibit 14.

The Chairman opened the hearing with the Pledge of Allegiance to the Flag and stated the purpose and procedure of the hearing. Following the hearing a meeting would be held to render decision for a lot size variance, lot frontage variance, front yard setback variance and two (2) side yard setback variances for a proposed single-family residence at 139 Castle Hill Road, East Aurora, NY.

Faes Dan Faes, 5614 Java Lane, Java Center.

Ernst It looks like you slid the house over slightly to get rid of the one side variance and slightly increase the other one.

Faes Correct, what our intention was that we have been looking for real estate within the village and the town for about a year now and haven't found anything. We

decided to do a renovation and what happened was that the builder said that you are going to end up with a poor house. He asked if we ever thought of demoing it and rebuilding. That is when we came to the town to see what the process was. We had architectural drawings for a two-story house and the existing lot does not meet today standards as it is now so there are already variances that are approved for.

Ernst The existing house is also non-conforming?

Faes Yes

TAPE MALFUNCTION

Ernst The whole street is probably non-conforming.

Faes We put in a submission for a variance.

Ernst Let's talk about the size of the house and how you came about that.

Faes We are looking for a larger house for a master bedroom, master bathroom plus the kids, we will probably have grandkids, so we want to make it conform to the kids and have them have an upstairs. Now there is two bedrooms in the basement, which is ok, but we want to get them out of the basement and get them upstairs, so they have better windows and better sunlight.

Ernst How many bedrooms are you proposing?

Faes Master plus three bedrooms upstairs.

Ernst So four bedrooms total?

Faes Yes.

Marsh What we are proposing is a master with four bedrooms total.

Morgan I am seeing here is four guest bedrooms.

Faes So there are five bedrooms.

Morgan Yes five not four.

TAPE MALFUNCTION

Heussler Have you considered downsizing?

Faes Yes we were looking to downsize from this here. What happened was we were paying an Architect by the hour. We decided to stop because we kept going back and forth so I thought I would see if this variance work's then once I have the variances then we can look at downsizing.

Morgan If you were to work with the existing structure that you have, modify, add additions. Is that something that you would consider?

Faes Yes, that was the first thing we considered. Doing an addition off of the back and bringing the front of the house out meet that bedroom wall.

Marsh That was when the building department said that if you were going to put that into then why you don't just revamp the whole thing and make it what you what.

Morgan When we visited youTAPE MALFUNCTION.

Ernst You do have to option to buy a new house instead of doing all this work.

Marsh Being in the Town that is surreal. I don't want to live out outside of the town, I don't want to live in the village. I think we have a perfect location and we have looked. Everything needs to be remodeled, put money into so why not put the money into where we are right now.

TAPE MALFUNCTION

Faes We remade that.

Ernst You are going straight across you are not having that bump out?

Faes Correct.

Ernst How many square feet?

Morgan It's 20 so about you are still at 4,400 sq. ft.

Heussler I think if you satisfy the neighbors you are going to be a little bit shorter. If we were to reject it you would have to wait a year to come back or if we could meet somewhere in between if in fact that is the way. Probably to satisfy the neighbors you would want a smaller house.

Ernst If there are objections we have to take them seriously.

Faes I don't have a clear answer on that.

Ernst I think we will hear from the neighbors.

ZBA #1427

2/16/23

Simeone For the record the only new variance he is asking is the southern side yard setback of 8.55'?

Burkhardt I think it's 8.76" the side yard.

Faes No we shifted it.

Simeon It's 8.55'. The problem we have as the chairman mentioned with only one variance generally it's not an issue. These folks here have a concern with the size. If we grant the variance the proof of the pudding is in the permit that you would get approved from the Town of Aurora. In a way that's not our concern we are only to vote on the variance. Unless we know what your final plans are it will be difficult for us to make a decision based on the comments that we are going to hear with the overall size. It would almost appear that unless you want to delay this and come back with some firm plans that the whole town could see and say no it's not 4,800' it's. We are hopefully going to codify a one-year permit variance for any zoning we have. We don't have that yet. As an example, if we would have passed this tonight you would have 365 days to get an approved building permit. In the interim you would have to get a bunch of permits to tear down your existing house. In my research as I have mentioned to you said that if you have a lien or a mortgage you would have to get approval of the lender and that is going to take some time.

Faes What drove all this was the house at the end of the street. As you can that house being a two-story home that is what drove our imagination as far as looking.

Simeone Checking on that the living space on the house is 3,090.

Morgan The difference on that one as well is the frontage. That one actually has quite a bit of frontage. Yours does not. The frontage on that one is 153' so the only variance besides this lot that was already building approved had gone out of compliance because they changed the code. The only other thing they applied for was a setback so that they would be in line with the neighbors. They could have put a 4,000 sq. ft. home on that property as well, but it would definitely sit a little better because their frontage was significantly more. That was 153' and yours is 100'.

Ernst The difference there too is that the property is on the corner, and it is more open and less trees.

Morgan They have one neighbor.

Ernst When you pull in and start driving up it seems like the environment changes. It becomes more park like, more trees. It is a much more rural type setting. A lot of the letters that we are getting is commenting on the change of the neighborhood and I think that one doesn't quite do that.

- Burkhardt Is your builder setup to start at a certain point?
- Faes No.
- Burkhardt Do you know if they will be able to start undertaking demolition and construction in a timely enough manner?
- Faes Yes he is a good friend of mine.
- Burkhardt That is fine I has seen a lot of friendships go over building.
- Faes We have talked about this.
- Burkhardt Just with mind of that 365 days starting work, getting everything going, thinking about the impact on the neighborhood.
- Faes Right.
- Simeone Are there any comments other then what was sent to us?
- Miller There are eight (8) in the file.
- Morgan They are all against, they are all opposed.
- Ernst Is there anyone in the audience that would like to speak on this matter?
- Ernst K Kurt Ernst, 108 Castle Hill. I am new to Castle Hill I have lived there for two years, and it is a delightful street. I am retired and spend a lot of time walking. I walk Castle Hill top to bottom every day and I have some observations and some detailed notice from public record. The house on Castle Hill were all build between 1950-1955. Classic mid-century American architecture. They are treasures. They range in size from 1000 sq ft to 2750 sq ft. Of the 29 houses 20 of them are true single-story ranch and 9 of them are cape cod style or modified cape with the second floor being within the roof line of the low front of the house. The lot size varies from .36 acres up to 1 lot that is one full acre. The average of the lot on Castle Hill is .6 acres. The character of the street is defined by the modest nature of the houses. Across the entire structure of Castle Hill Road, the average structure size is something short of 1700 sq ft. 18 of the 29 houses fall between 1500 and 2000 sq ft. It defines the character of Castle Hill. A Character that will be adversely effected. I know that zoning has changes since to 1950's. There is nothing to prevent a two-story house from being built and I would never interfere with that. It would set a precedent on the street. It would a two-story house on a half of acre. The reality is by a factor of almost, if built at 4800 sq ft or in that vicinity the structure would be very close to three times larger than any existing structure. That to me says and I apologize, mc mansion. I have seen it

happen before in neighborhoods and in resort areas and what would result is the essence of Castle Hill Road with an adnominally. I am not saying that 139 Castle Hill could not be improved, demolished, and rebuilt but to be respectful of the neighborhood that has been around, and it is truly a neighborhood being a dead end. To be respectful to the neighbors and the neighborhood that has been around for 75 years. It was here before any of us, and it will be here long after we are gone. To disrupt the nature of that time capsule would be injustice. I do believe the new house could be built of adequate size and respectful fashion with a clever architect and it sounds like it's being worked through the architectural process. My concern and I think the concern of all of the neighbors which I am going to speak for everybody is once this change is made if it is granted as proposed, you can never go back. The nature of that place will be changed forever. I think it can be changed and I think it can be changed in a different fashion with more care and respect not only for the people that live there but for the actual epiphany that gives Castle Hill Road. Again, it's been here for a long time, and it will be here for a long time to come. I think somewhere between what is proposed and what overwhelmingly currently exists there I think a clever architect could bring in something more appropriate. A traditional two-story house at that location would dominate the horizon. If we called quickly reference question #6 on the application.

- Ernst Is the proposed action consistent of the prominent character of the existing built for a natural landscape?
- Ernst K Yes.
- Frederick M I am Mair Frederick I live at 60 North Willow, and I am speaking on behalf of my mom. She lives at 149 Castle Hill Road.
- Frederick W I am Bill Frederick, husband at the same address.
- Frederick M My Mom concerns are when a proposed dwelling is in the keeping of this realm in an associate park-like ambience with good setbacks and respectful distances from adjacent properties this plan here is to increase of the housing footprint by 50-60% and add more concrete driveway. The closeness to new dwelling and the added height reduces or eliminates established sight lines and notably reduces the distance from my home to their logical entertainment center surrounding the pool. Where are the pool and outdoor space plans that are omitted. The extend of the intended expansions of those spaces should be rendered as well. The current structure may be sided with asbestos containing material that must be removed in a compliant matter and it should be verified prior to deconstruction to control insure ACM's will not impact adjacent dwellings human health or the environment. Will any utility easements be impacted? 50-60% enlargement of surfaces on the lot will increase stormwater runoff from new roofs, expanded driveway and an unknown outdoor pool side tent configuration. What drainage modifications are planned and scheduled to accommodate the increased discharge

and flows to the adjacent yards? This notable destruction construction effort will create a very messy situation for a lengthy period of time. The owner may have an optimistic schedule but knowing supply change constraints and labor competition indicate the project will require 18-24 months to complete. This extended time frame will affect my property my value during a period while I may be required to leave my home due to elder age issues. The variance application shows the new foundation lines of the garage with the setback of approximate 12 ft. or within the town code for setback.

- Frederick W When she said that we were probably looking at the wrong web page.
- Ernst Those are all very good concerns, but they are not Zoning Board concerns. They would be for the building department, and they would have to go through a process.
- Yaverski Mike Yaverski at 158 Castle Hill Road. I am not an architect. I live a with these people and if you did a show of hands on this side of the room of who is not in favor of this large building that would change the landscape, I ask you to raise your hands right now. Who is not in favor of this? If it could be adjusted to fit the landscape fine. The bottom line is the facts are this way it just doesn't fit the landscape. It's too big.
- Miller Joanne Miller 87 Castle Hill Road. I am opposed to this because Castle Hill Road is a small, short dead-end road with very modest homes. This that is being addressed at the end of our road, I am concerned that it is going to perhaps bring in a bed and breakfast, concern. I am concerned that there will be a lot of traffic that normally does not exist on this road. My house is just in the middle of the road and anything that happens up there at the end of it, I am impacted by. I have had Mr. Gunner and his crew service the road in front of my house. I get all the water, sewage, front and back. I feel that is a concern of mine. The safety issue, not so much going up but returning buses, construction vehicles, Amazon trucks. They just fly down the road. I have a concern about the ambience.
- Ernst What made you think that it might be a Bed and Breakfast?
- Miller It's huge. A five bedroom and as many bathrooms building is enormous. The idea of the amount of the square footage. Our houses on that road are modest. They are small. My house is less than 1000 sq ft.
- Ernst Is there anyone in the back row that was not heard that would like to be heard?
- Kader 67 Castle Hill Road. My concern is the 8' on the one neighbor's side. That is a lot. I can't even discuss what I am concerned about because this isn't the meeting to do it. Will there be a meeting on the building side of it?
- Ernst I don't think so as long as there are no concerns with the building department.

Kader My concern is drainage.

Ernst They won't give them a building permit unless they feel the drainage works.

Kader Once this is done and I have drainage problems coming down who do I come to?

Ernst The Building Department.

Kielich Yes we look at the concerns, drainage, landscaping how the water is going to run.

Kader My concern for this meeting I guess is that they are going 8' to one side.

Heussler We are aware of that.

Kader You are telling me that because of our old laws where it is right now it is not in the right position, but she needs a variance because of the law change.

Heussler As with any of you.

Kader It is going to be the same going across, it is not going out any further?

Heussler Yes.

Morgan There is a side yard variance request as well.

Kader That is my concern the 8' that is a lot on one neighbor's side. I can't even discuss what I am concerned about because this is not the meeting to do it. Will there be a meeting on the building side of it?

Ernst As long as there are no concerns when the building department looks at the plans. and gives them the ok.

Kader My concern is drainage.

Ernst They will not get a building permit unless the drainage works.

Morgan That is a part of the building permit.

Kader Once this is done, if it gets done and I have drainage problems coming done who do I go to?

Ernst The building department. You start with them.

Kielich Yes we look at all the concerns, drainage, landscaping and how the water is going to run.

ZBA #1427
2/16/23

Burkhardt Is Liz (Cassidy) the stormwater management?

Kielich Yes.

Kader I guess my biggest concern for this meeting is the fact that they are going to 8' on one side.

Heussler We are aware of that.

Ernst Why do you think the drainage changes?

Kader We have drainage problems we are down at the end of the hill.

Ernst How does that effect you?

Kader It goes by bedrooms.

Ernst Are you talking about storm drainage or what kind of water are you talking about?

Kader We have water running down constantly.

Ernst Storm drainage.

Kader We have piping behind our house too. All that comes down. We had sewer inspectors.

Ernst Bedrooms don't change that.

Kader No but bathrooms do.

Morgan That is storm it's not sanitary. They are two different. We really hope that you are not having bathroom drainage coming into your yard.

Kader I guess my whole concern was the 8' on one side since this is just a variance meeting.

Ernst Thank you.

Flaherty Carol Flaherty 112 Elmwood Avenue. My property is behind and one over, so I am kitty corner. My neighbor Laurie Eaton whose property is directly behind the Marsh property could not be here tonight. Our concern is the drainage. Part of the plans that were submitted that I looked at on-line does not show the pool. I don't know if the pool is going to stay. The drainage in my yard and in my neighbor's yard from this particular property has caused us to put in drainage tiles.

- Ernst That is quite a slope to there.
- Flaherty The pool drains into my yard every year and it's been a real problem, so I am concerned about the extension of the property and what that is going to do and if the pool is going to be modified in anyway.
- Morgan If they address the drainage do you have an issue if the house/structure itself?
- Flaherty I live on the other side of the street, I am on Elmwood, so I feel for everybody here. I can't address that house. I don't drive up Castlehill.
- Heussler Do you and Laurie see that house from your backyard?
- Flaherty Absolutely yes.
- Wing I am Maureen Wing I live at 169 Castle Hill. I too live in a house that my father built in the 50's. I moved from the city of Buffalo 11 years ago and we moved back. I am glad that I did, I love the street, I love the neighborhood and the neighbors. I can't say enough about East Aurora. I have four children and I have a three-bedroom home. I had a three-bedroom home in the city as well. I know she said that she has three children and I do know what their ages are, and she also said that she would like to have a five bedroom and a five bathroom for her grandchildren. Not to get into anyone's personal business but I don't know if the plan is that everyone is going to be living there at one time or another but the reason I am saying that is when the other one spoke up saying a B&B my concern is if we are going up four times in square footage is this going to be potential for an air B&B at some time with the inground pool? I had a daughter get married last year do you think we could a place for people to stay in the East Aurora area? It was hard in the summer. That is just another concern that popped into my head.
- Ernst We will ask that.
- Wing The other concern is that these drawings do look like a house you would see in the suburbs, so I do feel that it is very much out of character for the neighborhood.
- Ernst Is there anyone else that would like to speak on this matter? (No response). The hearing is closed.
- Burkhardt One question, the Village has a very clear permitting process to come and to apply for an Air B& B. Does the Town even allow for that or what is the process of becoming and Air B & B? I think the reason for the Village was for the emergency personnel to be aware of the fact that there could be ten people possibly staying there and just to have the knowledge about responding and who could be residing in that dwelling.

ZBA #1427
2/16/23

Kielich It is a whole separate permitting process, and I really don't know the particulars.

Burkhardt So there is one that they would have to go through?

Kielich There is a process.

Burkhardt Would it have to be classified a two-family home in order to become an Air B & B?

Marsh I have no intentions in doing an Air B & B.

Kielich I am not sure.

Simeone I thought an Air B&B the owner had to live there so then it is a single-family home and if they get a permit for an air B & B.

Marsh I understand if we were to bring the architect out and look at the area and kind of structure it more to be a little bit more appealing and blend in. If we are going a little smaller and still doing the second floor. The basement would be office/workout or whatever, but I would really like to have that second floor and get my kids out of the basement.

Ernst So no Air B & B?

Marsh No.

Heussler If you could shrink the width a little bit it would make our job easier. We still would still have to deal with the variances that are out of conformance now. If you made it eight feet narrower and then listen to the neighbors and maybe four bedrooms instead of five.

Marsh Would we still be able to do the demolish and still use the same platform like we are using the basement and still going up.

Morgan You can propose whatever you want. It's pretty overwhelming that there is neighbor concerns.

Ernst That are many concerns here.

Morgan That is one of the main points here it's neighborhood and character.

Ernst The size of it. I think it's hard for us as a board to approve anything when we know there are going to be major changes and we don't know what they are. I would suggest if we can that we table it if you are in agreement with that and you get those changes and come back. If we don't and actually vote on it and we turn it down you are gone for a whole year.

Heidt I am Mary Heidt and I live at 168 Castlehill Road. I was just wondering how long the process from demolition and the length of time.

Faes We don't know that.

Heidt On behalf of all my neighbors but especially Rosemary here who has endured many issues with Ms. Marsh over the many years.

Marsh It was my ex-husband.

Heidt Rosemary is 91 and walks up and down the street all the time but she has given up so much. Not given her age but it would be very damaging I think to her and to all of us, but I think especially to her. I am supporting her. Thank you.

Ernst Thank you.

Ernst I'll make a motion to table this matter until the next meeting in March to give the petitioners time to address the concerns.

Heussler I'll second it.

All those in favor?

Ernst Aye

Heussler Aye

Burkhardt Aye

Simeone Aye

Morgan Aye Ayes-Five Noes-None Motion carried.

EXHIBITS

February 16, 2023

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