

**MINUTES - SPECIAL MEETING
ORONOCO TOWN BOARD
JULY 15, 2019 5:30 PM**

The Pledge of Allegiance was recited.

A Special Meeting of the Oronoco Town Board was called to order on July 15, 2019 by Chair Neil Stolp. Supervisors Neil Stolp, Charlie Lacy and Ken Mergen and Clerk Lucy Shonyo were present. Treasurer Kim Stanton was absent.

The posted purposes of the special meeting were: 1. Public Hearing OR2019-003VAR, applicant Astorino, 2. Oronoco Auto Parts flooding, 3. Ryan's Bay Road.

Variance OR2019-003VAR, applicants Jessiah and Shannon Astorino.

This action was originally scheduled for the July 1, 2019 town board meeting but could not be held due to notice requirement errors.

Kristi Gross from Olmsted County Planning was present to describe the requested variance, applicable ordinances and staff findings. The information below is from the staff report of the Olmsted County Planning Department. The public hearing follows the staff report.

Summary

The request is to allow exterior storage for a home occupation. The property is located in the Safari Estates Subdivision. The address is 7651 11 Ave NW. It is on the west side of 11 Ave NW; North of Highway 63 (75th St NW); in the SE 1/4 of the SE 1/4 Section 34 of Oronoco Township.

Background

The property in question is zoned R-1, Low Density Residential zoning district. The property is currently owned by Mr. and Mrs. Astorino. It is located within the Safari Estates Subdivision. Mr. and Mrs. Astorino have been using their property as a home office for tree service business and it was recently brought to their attention that a permit was required for such a use and that exterior storage associated with the home occupation was not permitted within the R-1 zoning district. The applicants are requesting a variance to this requirement to allow for exterior storage. They are proposing to screen the location of the trucks from the adjacent property owners with a privacy fence.

Variances requested

1. Variance to allow exterior storage of three trucks in association with a home occupation.

OR2019-003VAR, applicants Astorino, continued

Zoning Regulations:

Section 10.02 of the Oronoco Township Zoning Ordinance provide requirements for Home Businesses:

Section 10.02 **HOME BUSINESSES:**

- A. In any zoning district where home businesses are authorized, a home business shall comply with the following regulations:
 1. Said use shall occupy an area no more than twenty five (25%) percent of the total floor area of the dwelling.
 2. No home business shall require substantial interior or exterior alterations of the dwelling.
 3. No home business shall create emissions, surface or groundwater discharges, odor, dust, noise, electrical disturbances, glare, or vibrations exceeding the standards of the Minnesota Pollution Control Agency measured at the source of the emission or discharge, the property line, or within 500 feet of the nearest neighboring dwelling.
 4. Unless prohibited in the district, a business allowed as a conditional use in the RC, CS, HC, or I districts shall be considered for approval as a home business only through the conditional use permit process.
- B. A home business allowed in the R-A, R-1, R-2, or RSD Districts shall comply with the following regulations, in addition to the requirements of Section 10.02 A.
 1. No person shall be employed other than a member of the household residing on the premises.
 2. The home business shall be conducted entirely within buildings, including the dwelling and no more than one accessory structure, and may involve the use of no more than one accessory structure exclusively for storage.
 3. Signage shall be limited to one (1) non-illuminated identifying sign measuring not more than two square feet in area.

OR2019-003VAR, applicants Astorino, continued

4. No business shall be permitted as a home business that is allowed as a conditional use in the RC, CS, HC, or I districts.

Analysis and Findings

The findings of fact following support approval for the variance to allow exterior storage for a home based business with the following conditions: (NOTE: initial findings supported approval)

1. No byproducts of the tree business such as tree parts or woodchips can be stored on any part of the property.
2. All material storage currently located on Safari Ct NW must be removed within three months of approval of the variance.
3. Vehicles associated with the home business shall not use Safari Ct NW except for the clean up of the existing logs over the next three months.
4. An E bufferyard is required between the exterior storage area and the south property line. Figure 1 shows E bufferyard requirements.
5. Must install 6' privacy fence per site plan.
6. Must apply for Home Business application and provide updated site plan showing required bufferyard.
7. The Home Business exterior storage must be terminated if a detached accessory building is built on the property.
8. The variance will expire in five years on July 1, 2024.

OR2019-003VAR, applicants Astorino, continued

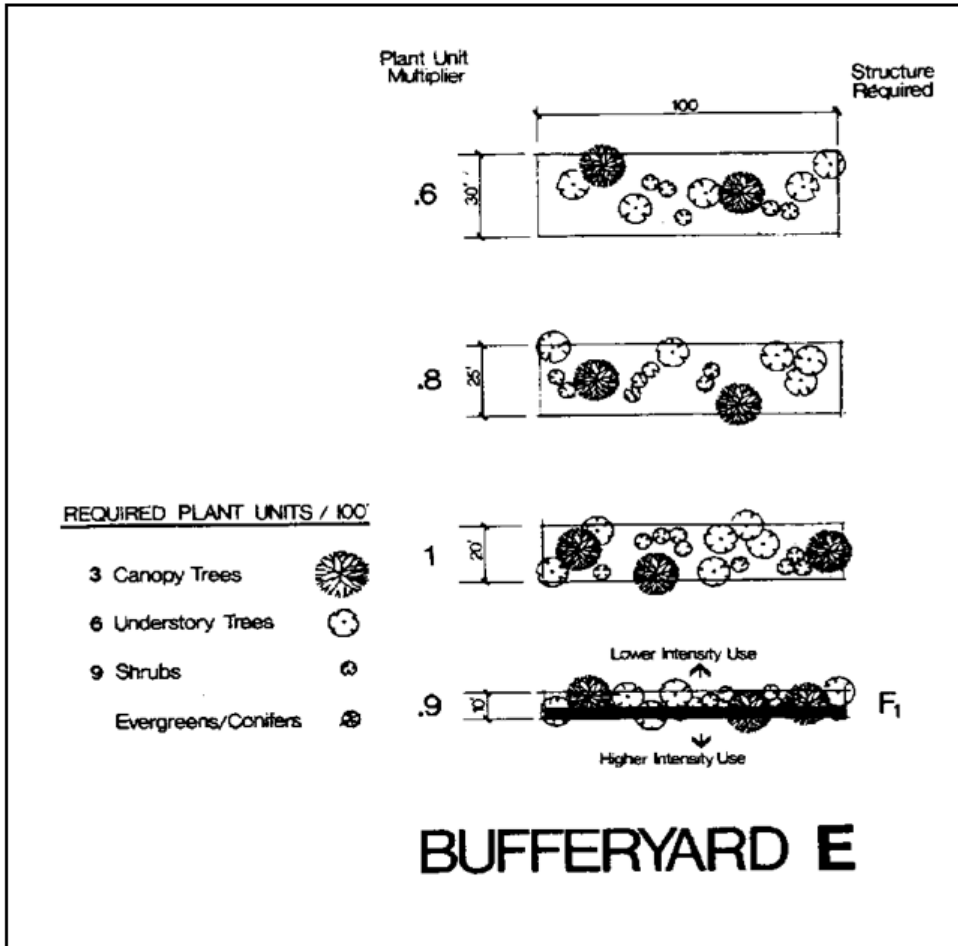


Figure 1

According to Section 4.08 in the Oronoco Township Zoning Ordinance, a variance from a provision of this zoning ordinance may be granted by the Board of Adjustment in those cases where the zoning ordinance is found to impose unnecessary hardship to a property owner. The Board of Adjustment may not permit as a variance any use that is not permitted for the property in the district where the affected person's land is located.

- A. **Criteria for Granting a Variance:** A variance may be granted only when the applicant for the variance establishes that there are practical difficulties in complying with the official control. Economic considerations do not constitute practical difficulties. The Oronoco Board of Adjustment must find evidence that all of the following facts and conditions exist:

OR2019-003VAR, applicants Astorino, continued

1. There are extraordinary conditions or circumstances, such as irregularity, narrowness, or shallowness of the lot or exceptional topographical or physical conditions which are peculiar to the property and do not apply to other lands within the neighborhood or the same class of zoning district; **The property in question is heavily vegetated. The property is adjacent the agricultural district which would allow exterior storage for a home based business.**

2. The extraordinary conditions or circumstances are due to circumstances unique to the property not created by the landowner; **The business is created by the landowner, therefore the circumstances have been created by the landowner. The fact that there is not a detached accessory building to use for storage is not created by the landowner, there was not a detached accessory building on the property when the current owners bought the property. It did not occur to them that a permit would be required for the business. The property is unique in the fact that it is so heavily wooded that with additional bufferyard, the exterior storage can be accomplished in a manner not to impose any disturbance to the adjacent property owners. Staff recommended conditions that would address the neighbors' concern on Safari Way.**

3. The variance is necessary to overcome practical difficulties in complying with the zoning ordinance so that the property can be used in a reasonable manner not permitted by the ordinance; **The practical difficulty in complying with the ordinance is that the applicant would have to build a structure to store the proposed business trucks in. The proposed exterior storage would allow for the least impact to the property.**

4. The variance will not be materially detrimental to the public welfare or materially injurious to other property in the area, and will not alter the essential character of the locality; **So long as the required conditions are met the proposal should be an improved impact to the neighbors. The home business is permitted, the exterior storage of the vehicles and storage of the arborist byproducts are not permitted. The variance would permit only the storage of the vehicles and require the arborist byproducts to be removed.**

OR2019-003VAR, applicants Astorino, continued

5. The variance is in harmony with the general purpose and intent of this ordinance; **The variance is in harmony with the general purpose and intent of this ordinance.**
6. The terms of the variance are consistent with the comprehensive plan. **The request is consistent with the comprehensive plan. The Oronoco Township and Olmsted County comprehensive plans support infill development of properties.**

Neil Stolp opened the public hearing for OR2019-003VAR.

Applicant Shannon Astorino spoke in favor of granting the variance. They didn't know they weren't in compliance until notified. They have been in business there 5 years. They have 2 employees. Their business requires large trucks. She apologized for the "large quantity" of wood on their property and agreed it was an issue. The R-1 allowed 1500 SF structure would not be large enough. A variance is needed to build a building large enough for 3 trucks. They need this variance to operate.

When asked why the property hasn't been cleaned up sooner Mr. Astorino stated they didn't know it was an issue "until they got the letter". His neighbors did not talk with him "face to face". It is hard to find secure off-site parking for their vehicles. The only business traffic into their property are their 2 employees. Wood is not split on their property. No more wood is being brought there. They do have a wood pile for personal use.

Three property neighbors spoke against granting the variance citing: the large trucks are a detriment to the neighborhood and dangerous for young children, is requiring cleanup compliance before granting the variance possible?, currently not complying with the ordinance, why would they in the future?, move up cleanup of debris pile in addition to wood pile.

Peter Gay, an immediate land neighbor, submitted "Comments Regarding Requested Variance #OR2019-003VAR" to the board and asked that it become part of the public record of this action. In part, Dr. Gay states that the business is in violation of Sec 10.02 Home Businesses [of the Oronoco Township Zoning Ordinance], in these ways: the business has "additional large equipment", the business creates emissions, odor and noise, the business has non-family employees, the business cannot be conducted entirely within buildings, signage on trucks exceeds limits.

In response to County Analysis and Findings Dr. Gay states / asks: the property and Safari Court ROW is strewn with discarded business byproducts, why can the trucks use 11th Av NW but not

OR2019-003VAR, applicants Astorino, continued

Safari Court? The weights and classes of “additional large equipment and trailers” should be verified as they may exceed maximum allowable weights, the buffer and 6’ privacy fence required by the variance are insufficient to obscure the view and reduce noise.

In response to the Planning Departments Criteria for Granting the Variance Dr. Gay states: to say the property is “heavily vegetated” is misleading, and it is untrue that a privacy fence and buffer plantings will adequately shield neighbors, the purpose of the variance is to allow the business to store their vehicles on-site, a financial consideration which is “not an acceptable criteria”, “it is arguable that the variance request is a substantial detriment to neighboring property, impairs the intent and purpose of a residential zoning ordinance and not in any public interest but solely for the personal gain and interest of Mr. Astorino”, the conditions of the variance will not solve the problems.

A citizen who was not a neighbor indicated the board should consider a “favorable outcome for all” and not “attack [the Astorino’s] primary source of income”.

Neil Stolp asked 3 times for additional comments for or against granting the variance. Charlie Lacy made a motion to close the public hearing OR2019-003VAR. Neil Stolp second, motion carried 3-0.

Charlie Lacy noted that although the property is wooded, the proposed building site is not the only one available. The storage building could be built farther away from the property line and their neighbors.

Mr. Astorino said their septic system drainfield was on the north side of their property, prohibiting building there. Also, that area is not level.

A 10’ fence (instead of a 6’ fence) would require a building permit.

Ms. Gross noted a variance is indefinite unless otherwise stated. This variance would expire in 5 years, July 1, 2024. The owner could ask that it be continued.

Neil Stolp noted the employees, trucks, wood pile and debris in road ROW were problems. He generally supports family businesses but neighbors are objecting.

Neil Stolp made a motion to re-open the public hearing. Charlie Lacy second, motion carried 3-0.

OR2019-003VAR, applicants Astorino, continued

The question was asked if the variance was denied could the applicant reapply? Yes after 6 months per Ms. Gross.

Ms. Gross confirmed that the Astorino property was zoned residential, R-1.

Mr. Astorino said he was willing to negotiate.

Ken Mergen made a motion to close the public hearing. Charlie Lacy second, motion carried 3-0.

Ken Mergen stated the business was not in compliance with home business regulations. Ms. Gross stated that employees were not working on the property but were “coming and going” which is considered an acceptable practice. She noted the building could only be used for storage. If the variance is denied trucks cannot be stored on the property. The size of signs on trucks is not an issue per Ms. Gross.

Charlie Lacy noted the fence could be more than 6’ tall, the situation was created by the property owner in that they bought residential property without an existing building, and the building site could be moved away from the property line and their neighbor.

Neil Stolp made a motion to deny OR2019-003VAR based on the following amendments to staff recommended findings:

- The extraordinary conditions or circumstances are due to circumstances unique to the property not created by the landowner; **The conditions requiring the variance were created by the property owners. The property zoned R-1 was purchased by the landowners without a storage building. The business they started necessitates the storage building. (amended finding)**
- The variance is in harmony with the general purpose and intent of this ordinance; **The variance is not in harmony with the general purpose and intent of this ordinance. (amended finding)**

Charlie Lacy second, motion carried 3-0. [Stolp: deny, Lacy: deny, Mergen: deny]

The board took a short break, reconvening at 7pm.

Oronoco Auto Parts flooding

Terry Leary is the chair of the concerned citizen’s group. She provided a history of flooding at the Oronoco Auto Parts site. She also noted that hazardous materials have been buried at the site over the years. She told of her conversations with local and state MPCA officials, the DNR, Olmsted County zoning, Olmsted County Board of Commissioners, and Senator Senjem. Citizens present spoke of their concern for clean water (surface and ground water) and asked why cleanup wasn’t an owner responsibility. Citizens noted official’s prior refusal to test water. Many observed the results of past flooding with debris from Oronoco Auto Parts debris in the river.

Charlie Lacy noted that last year Olmsted County intervened to move debris and tires back from the river. He stated that Oronoco Township has “no carrot and no stick” in this matter. Oronoco Auto Parts is now more of a health and safety concern than a concern about property zoning.

State, County and local officials will be present at the Oronoco Town Board meeting on Monday, August 5, at 5:30 pm, Oronoco Community Center to discuss this issue.

Ryans Bay Road

Ed Siems and Dori Klein from Zumbro Township were present.

Ken Mergen explained the project. “The hill” will be taken from a 15% to 10% grade and Sunset Bay road will be moved to tie into 400th St. To accomplish this about 4 acres of land needs to be purchased, which is in progress. This cost will be shared by Zumbro and Oronoco townships. The road will remain gravel. If homeowners want the road black topped in the future it will be an assessed expense.

There was conversation about when road construction will happen.

Zumbro Township got a bill from Dietrich Flesch, Wabasha County Engineer, for \$10,000. It is not clear what this invoice is for. They will contact Dietrich. They discussed the possibility of hiring a different engineer for construction oversight.

Ken Mergen made a motion to adjourn at 8:35pm. Neil Stolp second, motion carried 3-0.

Respectfully Submitted,

Lucy Shonyo, Clerk

Neil Stolp, Chair