

**TOWN OF CORINTH
ZONING BOARD OF APPEALS
600 PALMER AVENUE
CORINTH, NEW YORK 12822
518 654-9232 EXT 5
FRED C. MANN JR.
ADMINISTRATOR**

*April 5, 2007
Zoning Board of Appeals Minutes*

A meeting of the Corinth Zoning Board of Appeals was held on Thursday April 5, 2007 at 7:00 P.M. and called to order by Chairman Bill Clarke.

Present: X Sigrid Koch, X Jeffrey Fedor, X Bill Clarke, X Glen Tearnio, X Philip Giordano, X Attorney Pozefsky X Fred C. Mann, X X Attorney Cathi Radner X Linda Hamm Secretary

Public: Lance Gregory, Arleen Springer, Russell Springer, Edwin Eggleston, and Louise Reed

Chairman Clarke states he would like to start this meeting out by recognizing our new board member Jeff Fedor, he is formerly the Alternate member, unfortunately Chris Ross resigned. I want to say what an exceptionally good board member Chris Ross was and thank him for his (2) two years of service. I also want to recognize Linda for the exceptional job she is doing with the minutes and improving on a monthly basis, doing a great job, thank you.

A motion was made to accept the minutes for March 1,2007 with the correction to the second page, third paragraph by Glen Tearnio and seconded by Philip Giordano.

X Sigrid Koch X Jeffrey Fedor X Bill Clarke X Glen Tearnio X Philip Giordano

5 AYES 0 NAYS

Chairman Clarke states this is a public hearing for Mr. Lance Gregory for a second cabin on his property located on Davignon Road. Chairman Clark asks Attorney

Pozefsky if this is going to be a use or area variance? Attorney Pozefsky brings the board up to date. As you recall at the last meeting, the application was called a use variance because he wants to construct a second hunting, fishing camp on his property. You were not sure as to whether it was an area or a use variance. Since then I have talked to, the representative of the APA (Adirondack Park Agency), Tim Clarke. The public administrator also talked with Cathi Radner. I believe it is the consensus here that this is really an area variance here. The reason is because, we are not changing the use that is being on the property, and we are adding another structure.

The APA says, its not considered a principal dwelling, since it is less than 1250 square feet, it doesn't have electrical and it doesn't have plumbing. So what we are left with is a 4.74-acre parcel and under the zoning we need 3.2 acres for a principal dwelling, so there we are fine there. It's adding the second building that is creating the problem. Normally it would need another 3.2 acres for a second dwelling. I think what we are looking for is an area variance for a substandard lot, bringing it from the 6.4 to the 4.74. You would give an area variance for the 1.66 difference needed. Sigrid asks attorney Pozefsky that the APA is allowing this as long as there is no electric or plumbing? Attorney Pozefsky stated yes, with no electric or plumbing and as long as it is under 1250 square feet as this one is, and as long as it is a traditional hunting/fishing camp, they have no problems with it. I think the issue of a further subdivision came up also last month, and the APA told me that because the land had previously subdivided they wouldn't allow another subdivision on this property. Attorney Pozefsky states there are some restrictions in the jurisdictional determination. There are (5) restrictions they have to meet. Bottom line is the APA approves the hunting/ fishing camp, now the board needs to decide on the area variance. Chairman Clarke states his concern is the precedence that would established with all the new homes that are being built in the community. A hunting camp is one thing, but if the board is in approval of the application to this point, we may be looking at setting by this decision a new precedence in that zone.

Attorney Pozefsky states that it would have to be a pretty special circumstance, the hunting/fishing camp as proposed here is somewhat unusual. That is has no plumbing any electrical, it's a (400) square feet. I think if another one came along, yes it would be somewhat of precedence. Chairman Clarke says he wonders if they could go with an accessory structure, rather than another hunting camp? Attorney Pozefsky states that actually a hunting/fishing camp is allowed in this zone. The only difference is that the accessory structure doesn't have an acreage requirement. I think that is what you are looking at. You don't have to give a variance if you can call it an accessory. Yes, states Chairman Clarke. Attorney Pozefsky states that in your law book Appendix A Definitions for Accessory Structure- Any structure or a portion of a main structure customarily incidental and subordinate to a principal land use or development and that customarily accompanies or is associated with such principal land use or development, including a guest cottage not for rent or hire that is incidental and subordinate to and associated with a single family dwelling. This board has the power to interpret this and could interpret this building to be accessory

structure, which would then not require a variance at all. Sigrid Koch asks the applicant what they use for bathroom facilities? Mr. Gregory states his brother in law has a place near by and they use his. A motion was made by Glen Tearnio that the hunting/fishing camp be allowed with the stipulation that the building remains as a hunting/fishing camp along with the Adirondack Park Agency restrictions that are listed in their letter of determination. Philip Giordano made a second.

Roll call vote: X Sigrid Koch X Jeff Fedor X Bill Clarke X Glen Tearnio X Philip Giordano

5 AYES 0 NAYS

Congratulations Mr. Gregory, your area variance has been approved. You can now move forward to getting your building permit.

New Business: Mr. & Mrs. Arleen Springer return for a conceptual application for revocation of Mr. Edwin Eggleston's building permit.

Mrs. Springer states to the Zoning Board that she would like to hand out to them a new packet in reference to the first one each of them had all ready received. Chairman Clarke asks Mrs. Springer if she would like to state her appeal? Mrs. Springer states she would like to take their attention to the second packet she just handed to them and she will read the contents to them of her appeal. The following pages were read to the zoning board and to the public. The discussion also included the applications of Mr. Edwin Eggleston, definitions of elder cottages, any and all information related to approval and the un installation of the mobile home.

Chairman Clarke asks Fred Mann if he would like to respond. Mr. Mann states yes. When I found out that Mr. Eggleston had the mobile home there and was putting in an addition to the septic system, I went to him and told him he had to stop. Mr. Eggleston had no permit. I placed a stop work order on the project. Mr. Eggleston was told he needed a letter of determination from the Adirondack Park Agency. The mobile home remained on the property and the work on the septic system stopped. Mr. Eggleston received a letter from the APA in regard to the septic and mobile that stated he would need to put in another 500 gal. tank to equal a 1,000-gal tank to take care of the home. During this time Mr. Eggleston was waiting for a letter from the APA. The letter that we received was entitled, Minor Project Public Notice Application Completed with an APA Project # of 2005-344. I took this for the letter of determination, then calling Mrs. Colleen Parker of the Adirondack Park Agency, she told me that it was not a letter of determination, but that a permit from the APA was on the way, so I gave Mr. Eggleston his permit dated January 31, 2007. As it was wintertime, Mr. Eggleston was unable to continue with the septic work and as stated in a letter to the Adirondack Park Agency he would continue as

soon as the snow melted with completion at the end of April. Sigrid asked Fred if he at that time inspected the septic system, and he now has two different ones? Yes, Ed didn't want to run the mobile home on his system because he would have to run it across his driveway. It was not a stipulation in the variance that the septic was to be tied into the original for the primary home.

Attorney Radner stated that she believed that it was proposed in the beginning that the house would have it's own septic system. The system for the mobile was never intended to be tied in. The Adirondack Park Agency required an additional tank. Fred states, I told Mr. Eggleston he had to stop work until the letter of determination arrived.

Mr. Jeffrey Fedor asks Attorney Radner what the real issue here is that the Springer's are petitioning a permit that was issued they feel incorrect. Attorney Radner states that's correct. We are here to find out why the permit was issued how it was issued and if it was issued correctly. Attorney Radner states that's correct. That is the point. Mr. Fedor asks Attorney Radner if there was a time limit? Attorney Radner states that the letter is dated outside the sixty (60) day period, but I believe the appeal was filed within the sixty (60) days and this is just additional information that was added. Now with other information Fred stated that the Springer property does not touch the Eggleston property. So it is reasonable for you to determine if the applicant is aggrieved to bring this appeal. Mrs. Springer states she takes offence to that, we have had zoning in effect since 2004 and I don't need to live next to someone to take issues with things that aren't done properly. As Cherri Sullivan was not the secretary at the time of the approval for Elder Cottage for Mr. Eggleston her signature on the notice should not even be there. Mrs. Springer states that it makes no difference, who I live next to, I take consience in this community.

Jeff Fedor asks Attorney Radner if this is something that the board should be looking at? Attorney Radner states that the 2005 approval it is two (2) years old, the time to appeal that is long gone. In any event the Zoning Board of Appeals doesn't have the power to review an action by the Planning Board. You have to accept that this was an accurate approval and that this action was in place.

The question is solely whether or not Fred's determination to issue a building permit on January 31st, was a determination that can be upheld or a determination that should be reversed.

Mr. Jeffrey Fedor states that his concern is that of any outstanding violations and issuing a building permit. I think that is something we need to be very careful of, we've seen once; twice we need to be very careful. We have to be careful of precedence. Glen Tearno asks, is the fact of the manufactured home immaterial? Mrs. Springer stated no; this was approved by the Planning Board. Mr. Tearno asked when did you become aware of the mobile home being there? When they started the deck? Mrs. Springer stated no, it was before that. It was when the mobile

home was brought; they had 9N tied up for a while. Mr. Tearno states to Attorney Radner what my concerns are now is if for example, if Mr. Eggleston's application is annulled and the mobile has to be removed, then he would have to reapply for a new building permit. If that is denied then what? Attorney Radner states what would happen at this point, if you revoke the building permit then the cottage is illegally there, he would either have to go back for an after the fact use variance from this board in order to have that cottage there and start over, or you have to remove it and they have to find another home. We no longer have automatic use variances for Elder Cottages. That's correct states Attorney Radner.

Sigrid asked Fred if he could tell her the steps in which to properly get a building permit. Fred states, with residing in the Adirondack Park Agency we first tell the applicant that they need to get a letter of determination from the Adirondack Park Agency before we can consider issuing a building permit. Then the building permit along with a septic permit if installing a septic system. Sigrid asks then why Mr. Eggleston was allowed to put the mobile home and septic system in? . Sigrid asks, why has it taken two (2) years to get this taken care of? Attorney Radner stated to Sigrid, that there was not time limit put on the Planning Board Approval.

Mr. Eggleston went to the Planning Department first to get a variance for an Elder Cottage. This was approved on May 18, 2005.

Mr. Edwin Eggleston stated that there were situations that came up and I didn't have all the money at one given time to pay for the work to be done. I'm not a rich man, and living on a fixed income I can only do so much at a time.

Chairman Clarke states the similarities of Mr. Mark and Mr. Edwin Eggleston. Like the developing with out a permit. The Adirondack Park Agency is taking care of the Junkyard portion of Mr. Mark Eggleston's property. Could you fill us in Fred on the standing of Mr. Mark Eggleston? Fred states that Mr. Mark Eggleston will be re appearing in court on April 20th, in front of the judge. Chairman Clarke asks Fred, was a site plan issued to the County? Fred states you will have to check with the Planning Board, once we get a statement from the Planning Board that the person has been approved, we move forward. Mr. Glen Tearno, asks Fred do you first get a letter of determination from the Adirondack Park Agency? Fred states yes, but this time we first received a completion letter with the permit letter following.

Sigrid Koch states that her concern is, basically we need to set precedence. It is clearly a 4.3 law. Building Permit. Before the construction, relocation, or alteration of any structure as to the outside dimensions and structure, a building permit shall be obtained. No site preparation for any building shall begin unless and until a building permit has been issued. Then law 4.4 Principal Buildings Per Lot. Unless otherwise specified, there shall be only one (1) principal use and building per lot is allowed if the minimum required lot area, lot width and all yard requirements are met for each.

Attorney Radner states there is no doubt there was a violation of the permit, of the zoning code when the mobile home was put there with out a building permit. What I was talking about, if you apply the section of the law that says you can't get a permit if there is a zoning variance and it's the subject self that created the problem, what you do is totally eliminate the possibility for anybody to after the fact get a permit. People do, do things sometimes with out realizing that they needed a building permit. Which how they cure this is, that is they get an after the fact building permit. Now when a Code Enforcement Officer, Zoning Board of Appeals member has to look at one of these after the fact things, they have to treat it as though it was not there, when they make their determination of whether to issue a building permit or not. I would be careful in over interpreting that section of the zoning ordinance that requires the fine work of getting a permit. I think that, that section is more applicable to the Mark Eggleston situation, where you have another violation. You've got a problem with an out of compliance junkyard. You've got someone coming that is all ready out of compliance with your codes, seeking to put more things there on that property.

You first need to get your property in compliance before you ask to put more things there and still be out of compliance. You need to be in compliance first. Here the violation is you've got a building without a permit. How do you cure a building without a permit? You get a permit! Jeff Fedor says you don't take someone out of their home that may not be knowledgeable and make them take it off and file for a permit to put the home back on the property as apposed to a sun room that was added. Correct states Attorney Radner. There are times when it's well within your power to say no, were going to deny this variance, your going to deny that permit, rip it off. It's not unreasonable to do that in certain circumstances. I'm just cautioning you to not over interpret you're zoning ordinance so your forced to do that every time.

Sigrd states that it's similar to the project in Saratoga Springs, where they were they built higher than they were allowed and were forced to take two stories off the building. Absolutely states Attorney Radner and I have an article (78) seventy-eight proceedings where we got that result.

Sigrd states that perhaps we should put something in the paper stating that building permits are required. Attorney Radner states that is a subject for another day and another board.

Mr. Glen Tearno states he would like to make a motion to approve and uphold the decision of the CEO in giving Mr. Edwin Eggleston and that the building permit be reinstated. Jeff Fedor made a second. Roll call vote was taken.

No Sigrd Koch Yes Jeffrey Fedor No Bill Clarke Yes Glen Tearno No
Philip Giordano

3 Nays 2Ayes

Vote Failed

A new motion was made by Sigrid Koch to deny the application as to Mr. Eggleston is in violation and was from the start. Attorney Radner stated for them articulate what you see is in violation, what the errors made and then your fellow members need to decide if there will be a second on that motion and whether or not they want to vote on that motion. Attorney Radner stated it was okay to ask for a recess if you need some time to put together a motion. Attorney Radner states she thinks they need to identify what you believe the violation is, because the only violation was the lack of a permit. That's why they're here. Again your going to box yourself in and I would advise you not to do that. If there are reasons why you feel that violation should be excluded +, state it, if there are reasons this is a more than an after the fact permit state it. If you need a few minutes to do that, take your time make sure you articulate your reasoning so your fellow board members can decide whether they agree or disagree with you.

Mr. Philip Giordano asked Attorney Radner if he could change his last vote? Attorney Radner stated he would have to add something to the original motion.

Again board member Sigrid Koch reads off her suggestion for a motion to the members no motion was made.

Philip Giordano stated he would like to make a motion to approve and uphold the determination of the Mr. Mann to issue a building permit as reasonable and with discretion but with the condition that the construction be completed within (6) six months and with the understanding which was approved by the property owner that the property being occupied by Shirley Spezio as an elder cottage, once that occupancy ends for what ever reason, within (90) ninety days the elder cottage is to be removed. Glen Tearno made a second.

A roll call vote was taken:

No Sigrid Koch Yes Jeffrey Fedor No Bill Clarke Yes Glen Tearno Yes Philip Giordano

3 AYES 2 NAYS

The secretary states to Mr. Edwin Eggleston that his variance for his elder cottage has been approved with a stipulation of completion of work be done in (6) six months.

A motion to adjourn the meeting was made by Glen Tearno and seconded by Jeffrey Fedor. A roll call vote was taken.

X Sigrid Koch X Jeffrey Fedor X Bill Clarke X Glen Tearno X Philip Giordano

5 AYES 0 NAYS

This meeting was closed at 9:00 P. M.

Your next meeting will be on May 3, 2007

Respectfully,

Chairman William Clarke