

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

December 6, 2007

A meeting of the Corinth Zoning Board of Appeals was held on Thursday December 6, 2007 at 7:00 P.M. and called to order by Chairman William Clarke.

Present: Y Sigrid Koch Y Jeffrey Fedor Y Bill Clarke Y Philip Giordano Y Fred Mann Y Attorney Pozefsky Y Linda Hamm

Absent: Glen Tearno with excuse.

Public: Dave Barrass, Shelli Everts, James & Sue Ann Emery, Michael W. Vasquez, Gail Opoka, Robert L. Keller Jr., Jay Emery

Approval of the November minutes: A motion was made by Phil Giordano to accept the minutes with one correction and Sigrid Koch seconded it.

A roll call vote was taken, Y Sigrid Koch, Y Jeffrey Fedor, Y Bill Clarke, Y Philip Giordano.

4 AYES 0 NAYS

Old Business: Linda spoke with the Allen's on Comstock Road and they are waiting to get the survey done for the mortgage company for their approval. They need this done before coming back to the board. Chairman Clarke asked Code Enforcement Officer if he was on board with that? Fred stated yes, as long as they show progress. Chairman Clarke asks if they have enough property? Fred stated yes, around 12- 13 acres. I can look back. There is no problem. They only need one acre for the mobile.

New Business: Mr. & Mrs. James Emery are her looking for an interpretation for having an apartment over the garage. Mr. Dave Barrass is here to speak for them. Mr. Barrass explains to the board that the Emery's have two separate pieces of property with two different tax map numbers, and they are both substandard lots. What happened is Mr. James Emery a few years ago built a garage and not realizing he was over his property line. There fore this lead to purchasing the other land from Saratoga County. The other piece of property is his house with a portion of the garage on this parcel as well. What he is attempting to do is build an apartment up over the garage for

his in-laws, but because the garage is on the line it makes two residences on one parcel which you can not get a permit for. We felt one way to solve this would be, since both pieces of property are pre-existing to the zoning laws and non conforming lots we would adjust the boundary line so that it went between both buildings, both would still be non conforming, but then he would have two conforming buildings. Mr. Emery went to the Planning Board, they deemed it was a minor adjustment of the property line and it would fit the criteria of a boundary line adjustment. Then the issue was brought up as to whether or not once we moved the boundary line does it extinguish the pre existing non-conforming status of the property? We were directed to you folks to make that determination. So the first thing we would like to see is how is that really interpreted? Do we loose the non-conforming status and it stops him from finishing the garage? What is the situation? Chairman Clarke asked if that property was currently for sale? Mr. Emery stated no. Chairman Clarke stated he saw a for sale sign down there. Fred Mann stated it was for the house in front of Mr. Emery's property on Route 9N.

Mr. Fedor asked Mr. Barrass if he had any maps? Yes! Mr. Fedor asks Sigrid if one is substandard, Mr. Barrass stated they are both currently substandard lots. It's one-acre zoning and both of them are substandard lots. Mr. Barrass states to the board that it is impossible to make two standard lots. If you look, you will see together they would only make an acre lot. Mr. Fedor asks what the zoning is there? Mr. Barrass states it is commercial. Chairman Clarke asks Mr. Barras what the property is currently in regard to the property line? Mr. Barrass shows the board members on the map. Mr. Barrass points out the existing and pre existing buildings, and back yard markings. Again what we are looking for here is to determine if by moving the boundary line it will interfere with my clients adding the apartment over the garage or not. These two lots were non-conforming prior and will still be non-conforming if the boundary line is moved. Attorney Pozefsky asks Chairman Clark to speak? I was at the Planning Board meeting and we did discuss this at length, and because this board has the power to interpret the code, that's probably where the board should go with this. Actually section 89-40 says you can build on any substandard lot that existed at the time the zoning law went in. It doesn't say anything about extensions of non-conforming lots and I think that's where the interpretation has to come in. The big question that came up in the Planning Board meeting as Dave said, you can move that line but do you have to make it a conforming lot or can it still remain substandard? We talked about this at length at the Planning Board meeting and moving the line solves a lot of problems obviously, it gets that line out of the garage. It increases the sub standard lot in terms of square footage. You also have a clearer right of way. You are actually improving the situation, but it is still sub standard. The question is, moving that line does it mean it now has to be a standard lot? My feeling on this is it shouldn't change the fact that it is sub standard. The code said you could build on a sub standard lot. The code doesn't say if you extend that it has to be standard when you're done. I don't think it makes good sense to require that, because there are going to be a lot of situations like that where you just can't have a standard lot. The only other alternative Mr. Chairman was to combine those two lots in essence to one. Basically eliminate the one line and make one big lot, the problem with that is then you have two residences on one lot. That would require a variance.

Jeff Fedor says then the question is how to have the garage fully done on one and leave the original sub standard, we would be just looking at a pre existing that is grand fathered. Attorney Pozefsky states yes, but by moving that line just a little bit out of the garage, in question does that change that into the new zoning? Would it loose it's grand fathered status? Chairman Clarke states we can put this on next month's agenda. Attorney said yes you can and I would like to point out that even when you move the lot line as proposed here your still not going to have setbacks that meet all the rules. The lot is still sub standard but according to the code, you can still build on a sub standard lot, it says you just proportionally move all the setbacks. That's under section 89-40. Chairman Clarke asks Mr. Barrass if they are going to wrap the driveway around. Mr. Barrass states he believes that is what they have in mind.

Chairman Clarke states we need to go through the whole process of notifying the neighbors and such. Attorney Pozefsky states actually no you don't. In an interpretation you don't even have a public hearing unless the board feels that it is necessary, it's not a requirement. Chairman Clarke states that we could get the public hearing in next month and any neighbors have any objections it can be handled then and Mr. Emery would be one step closer. Attorney Pozefsky states that this is one of those situations where the board has the power to interpret the code. Not really so much granting relief in terms of a variance. You are really just looking at the code and looking at the situation, and saying this is how we think it should be interpreted. Normally you wouldn't have a public hearing you wouldn't notify the neighbors you would just research it yourself and think about it and then render an interpretation.

Mr. Barrass states that his clients were hoping that we could have some kind of decision tonight and not have the process drag on. With the inclement weather coming in, it would make it more difficult to get the work completed. Attorney Pozefsky states that on the other hand, if the interpretation is that you have to get a variance, then there is going to be a public hearing and such anyway. Mr. Fedor asks Attorney Pozefsky if we are also concerned with setting a precedent of taking existing substandard lots. Attorney Pozefsky states and now will remain substandard when you move the boundary line. I should point out that the code says that you can make a boundary line adjustment and as long as you make a small amount of land is involved it not a subdivision. It does not say you can't make a boundary line adjustment where it creates or continues a substandard lot. So there is your interpretation, the code doesn't prohibit it; it doesn't really answer it. Mr. Fedor states so in the realm are we looking towards what's the spirit of our zoning or the spirit of the intent of that? Attorney Pozefsky states yes, and like what you said what kind of president and what kind of future are we setting. I do think you can take some guidance from the code where it says that, any substandard lot, which exists at the time of enactment of this chapter, can be built upon. The minimum setback requirements shall be reduced in proportion to the size of the lot as compared to the minimum required for the district. So I think you can get some idea that the code says you can still build on a substandard lot. Sigrid states but we are not talking of changing where the garage is. It's about building housing above a garage that is existing. Correct states Attorney Pozefsky, which this

code states that it is okay. It's not okay with the lot line where it is, that's why it needs to be moved. Sigrid asks what is the size of the properties surrounding and do they have houses on them?

Jeff Fedor states he is looking on page (8) of the land use book and you may not notice but what Marty was talking about is Article 4.2 D suffix 2, Further, nothing contained herein shall prohibit the use of an undeveloped lot in a subdivision which is in legal existence as of the date of enactment of the Local Law. If the question was if there was no garage and a request was brought here, can we build on that? In that respect we could look at grand fathering that, but above that on paragraph C it looks, No yard or lot existing at the time of the passage of this Local Law shall be reduced in size or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Local Law shall meet the minimum requirements set forth herein. So I am trying to understand if at the time this was written there was a desire to at least achieve a minimum lot size. Mr. Barrass states that the way he interpreted it was if you have a one acre lot there all ready, if that front lot were all ready a one acre lot and you adjusted the boundary to make it substandard you couldn't do that. In this case both of them are substandard, so you're not making a substandard lot. Your actually making one substandard lot a little larger and one substandard lot a little smaller, but your not taking a legal lot and making it a substandard lot. I think that is what that paragraph is leaning to. Mr. Fedor states he believes that also. Mr. Fedor states you have two substandard lots with one residence on one lot. Mr. Barrass states that in our case we have two substandard lots now, we are not taking a standard lot and making it substandard. Mr. Fedor states you have two substandard lots now but you are trying to create a situation with getting two residences on two substandard lots. Where currently we have one residence on one of two substandard lots. Chairman Clarke states he believes he needs more time to consider this and Mr. Fedor agrees. Chairman Clarke states he would like the neighbors notified with a legal notice.

Sigrid asks Attorney Pozefsky, in Article 4 4-2 C it states that No yard or lot existing at the time of the passage of this Local Law shall be reduced in size or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Local Law shall meet the minimum requirements set forth herein. So aren't we reducing? Attorney Pozefsky states I think no, it's like Dave was saying you can't take a standard lot and make it substandard. The difference here is that they are both substandard. Attorney Pozefsky asks Dave how much both lots would be together in terms of acreage? A little over one acre. Sigrid states then we go down to Article 4 4.2 D, Town Law Section 265- a, nothing contained herein shall prohibit the use of a lot of record in legal existence as of the date of enactment of this Local Law even if such lot or lots do not meet the minimum area and bulk requirements. (2) Further, nothing contained herein shall prohibit the use of an undeveloped lot in subdivision, which is in legal existence as of the date of enactment of this Local Law. Sigrid asks does that mean there are no structures on it? Or does undeveloped mean no residences? Attorney Pozefsky says he believes it means that if you had a substandard lot at the time this law was passed and there was nothing on it, you could still build on it. It is essentially grand fathered. Sigrid asks does undeveloped mean there is no living

quarters? Marty states he doesn't know if the word developed is defined in here? Attorney Pozefsky states in the other code, 89.40 says notwithstanding the limitations imposed by any other provision of this chapter, any substandard lot which exists at the time of enactment of this chapter can be build upon. Chairman Clarke asks Linda to go ahead to put a public hearing in for this. Linda states the public hearing will be on January 6, 2008 at 7:00 P.M. Mr. James Emery owner of the property states to the board that when he purchased the back property there was a mobile home there that her removed. I have done nothing but try to improve the property. I only want to put an addition to the upstairs of the garage for my in-laws to live in. Mr. Fedor states to Mr. Emery that I think the only thing we are trying to do is just try to make sure what ever the decision is, as far as the arbitration goes that the board makes here is made in accordance with the zoning regulations. That is what we have to be very careful of, that's why we are asking for the extra time. Chairman Clarke asked Mr. Emery if there would be any objection to any of the board members wanted to drive back on to the property just to look at the property to get a better look and understanding? Mr. Emery says no, it's access to four or five lots back there. There are dogs on the property so be careful.

Next on the agenda is Shelli Everts from Atwell Road. She comes to you for a variance in order to continue to use the second dwelling on her property her home is on. Mrs. Everts explains to the board that the gentleman that is living there works for Binachio and lives in Long Island. He goes home on alternate weekends. Mr. Fred Mann explains to the board that he knew the cabin was there when Wayne Beddoe had us look at it but no one was living in it except for maybe a weekend or so. I had someone come to the office and make a complaint that someone was living in the cabin full time. So I went to Shelli's and left a card requesting them to give me a call at the office. I asked her about someone living in the cabin and she said yes there is. I in turn told her she would have to come and get a variance, because you can't have two habitable residences on one piece of property. Shelli did have a fax sent to us but I have not had time to discuss it with her before the meeting. Shelli states that her question was because of a section that Mr. Mann quoted is come from section 63 which is building permits. It says at the beginning of this after the index, the history states [History: Adopted by the Town Board of the Town of Corinth 4-30-1992 Amendments noted where applicable.] What Mr. Mann told me I was in violation of was Chapter 20 Section B Article 6 A person who may build a structure which is used for living, constructed on a parcel of property which has an existing occupied structure, must appear before the appropriate Town Board for a variance before a permit may be issued. My house was built in 1988, and the cabin was there prior to building the house. So that kind of pre-dates this issue here. That's when I found the other sections in the same chapter. That would be Chapter 63 63-5 Definitions (2) NON CONFORMING USE - - A "nonconforming use" of land or structure thereon, or both, shall not be considered a violation of this chapter, provided that such use is in existence on the effective date of this chapter. [Amended 12-5-1996 by L.L. No.2-1996] and 63-21. Existing occupied structures. An occupied structure which is lawfully in existence prior to the enactment of this chapter may continue to be used as living quarters by its occupants, provided that the

water and sewage systems meet the minimum requirements of the New Your State Department of Health. I had this inspected in 2003 by Chuck Pavalich; he did two inspections on everything except for the water. The water does come from one well on the main house. This supplies the house the barn and cabin and is sufficient. The cabin has under ground wire; it does feed off the main house I did just find out last week that because of the heavy-duty wire I couldn't hook my generator up that I just bought. The cabin has it's own propane heat, propane hot water it's own septic system which was inspected in 2003. Jeff Fedor asked if it was a septic leach? No it's a dry wall. Fred Mann states that the one thing in this non conformance use that Shelli didn't continue to read was, providing that such use is in existence on the effective date of this chapter. [Amended 12-5-1996 by L. L. No. 2-1996] It was not a full time cabin in use at that time. Shelli stated that we don't know what Wayne Beddoe used if for. Fred stated that it was not being used as such when it was being sold. Jeff Fedor asked Mrs. Everts what does the tax map show? What is being taxed as far as is it just your primary residence or do you pay separate taxes on both? Mrs. Everts stated the property is zoned R-R rural residential and it was a single-family residence. Fred states that it is one tax map number for the home and the cabin. Chairman Clarke asks Mrs. Everts what exactly are you asking for? Mrs. Everts states she is asking what to do, I don't know where to go because when we bought the place our attorney contacted Mr. Mann because she was concerned about a Certificate of Occupancy. Two residences on one piece of land, we went through all of this with Wayne, Mr. Mann, the Attorney and such. We bought this place because it had the cabin; I didn't talk to Mr. Mann about it. We were bringing my husbands elderly father with us, it was going to be for him and his girlfriend to live in. They lived in it until he passed away, then three other people lived in that cabin. A good friend that was there between 6-7 months over the winter, a cousin of my husbands and his friend, they were there a little over a year. Now I have someone there since the middle of October.

Chairman Clarke asks what relief were you seeking from us. I am asking to be able to continue to let people stay there. Chairman Clarke states with or with out dividing the property. Mrs. Everts states no; I don't want to divide the property. Jeff Fedor asks how much property is there. Mrs. Everts states that the property with the house and cabin is around 4.93 acres. Then we also own the adjacent land, which is 6.9 acres. Attorney states to the board the you have two things that you are really looking at. One is the non-conforming structure, which is the building, and I don't think there is any question that it was there. I think that is grand fathered in. I think what your question is, what is the non-conforming use? Was it the occasional use or was it more of a habitation? Somebody living there when this code was adopted? I think it is up to the applicant to show what this code, this section that was adopted what kind of use was being made of it, whether somebody was living there or whether it was just an occasional use. That is what the grand fathered use is. If it is something more than the grand fathered use, she will need to get a use variance. Mrs. Everts asks Attorney Pozefsky how she does that? Would I have to go back to Wayne? Attorney Pozefsky states he's not sure who had it at the time but if it was he then yes. Shelli asked how far back do I have to go? When the house was build or when the laws went into effect? Attorney Pozefsky states when the laws went into effect. Do I need to get

some kind of statement from Wayne? You get an affidavit as to the use he was making of it at the time when this code went into effect. That would help the board showing whether it was seasonal use or weekend use or whether he was living there full time.

Jeff Fedor asks Shelli if she was using the cabin when they moved in there. Shelli states immediately. As far as our intent was when we purchased the home was to have the cabin occupied. Jeff Fedor states that on the application number (12) the application asks the length of time so used, you have (4) years. Mrs. Evrets states we purchased the house in November of 2003. We bought it from Mr. Beddoe. Jeff asks then immediately your father in-law moved in? Yes. Jeff states then you used it for a few years until he passed away? He lived in it until he passed away in July then others moved in, in late fall, October and stayed until spring. The next couple moved in in August and stayed until the following June. Jeff Fedor asks, to your knowledge the previous owner had been using that as a residence or a secondary residence? Yes, when we went there Wayne had personal affects there dishes a couch, clothing and what not. The main house was being rented out at that point. The guy that is using the cabin now is using it for the opposite. He is working here and stays in the cabin and goes back to long island every other weekend.

Chairman Clarke states that just in terms of the notification Andy Kelley has his lot between the two, would that also need to be a notification? Attorney Pozefsky states yes I would do that. Attorney Pozefsky asks the Chairman if he is also a neighbor? I am across the road so I would certainly consider recusing myself because of all the personal knowledge I have. I'm not ready at this time though. Mrs. Everets stated she thought that the only ones you had to notify was ones that bordered the property? Attorney Pozefsky stated yes. Mrs. Everets stated then the only ones that touch that piece of property are Vicki Sweet's house her vacant land and Mark Plummer on the corner. My vacant land borders Andy Kelley, and behind and behind Vicki Sweets and Leclairc's. Attorney Pozefsky asks then he doesn't border this property? No, just the other vacant lot. Attorney Pozefsky states he doesn't have to be notified then. Mrs. Everts states he can, I don't have a problem with it. Chairman Clarke states at this time I think I would like to public notice him too. Linda asks Chairman Clarke are we going to do the courtesies across the road then or no? Chairman Clarke states anyone that is contiguous that borders the lots because we are considering two homes on one deed. Chairman Clarke tells Shelli that it will cost her a little more for that and I apologize for that. It's like almost \$5.00 for the letter to go out. Jeff Fedor states if anything you may find neighbors that may be able to support what you are saying about the previous use of the land. Mrs. Everts agrees. Chairman Clarke states that we will put you on the calendar for next month. Jeff Fedor asks if she could provide them with a map. Mrs. Everts stated she would.

Attorney Pozefsky states to the Chairman that if you put the notice in the paper you could put it in as interpretation or variance like we are doing with the last applicant. Shelli asks if she should get some kind of statement from Wayne or ask him to be present? Chairman Clarke states he believes a statement that is notarized will be fine. Chairman Clark asks Attorney Pozefsky if there is anything else she needs? It is the

applicant's burden to demonstrate the pre existing non-conforming use states Attorney Pozefsky. I think that is in your best interest Mrs. Evrets so this board can say, it's grandfathered. Let's say I get this grand father and somebody is living there pretty much on a daily basis now, and in six months goes by and I have no one in there, then somebody else comes in, what are my options? Attorney Pozefsky states there is a code provision that says that if you don't continue that use for I think is one year, if you discontinue that use for a year, excuse me that is two consecutive years, you will loose it if you don't use it.

Chairman Clarke asks if there is any other new business? Anything from the public? Board members? Philip Giordano states we were talking about maps before and if you go to Saratoga County Web Site, there is a section that says GIS and it's great, you can zoom in on all the properties and tax maps. You can click on each one and get the size of the property, the owner. So this afternoon I looked at these properties and was able to see if there were wet lands, what the roads were and all.

Chairman Clarke asks if there is anything else. Arlene Springer in the public states she has a question for Attorney Pozefsky in regard to the Emery's. There are two existing things why would it not be a use variance if nobody were ever living in that garage? The boundary line adjustment I understand but why wouldn't there be a use variance if you're taking a garage and making it into a residence? Attorney Pozefsky states that, that section of the code says you can build on a substandard lot. So the question is, does moving that line take it out of that grand father? That is what the board has to decide. See you started with two lots, so if you have one residence on each lot, that is permissible under the code. Even if they are both substandard. Mr. Koch stated what he thinks Mrs. Springer was talking about, if you move the line that's fine but, if you build a garage and then put an apartment above that? Fred Mann states that was if it remained as one parcel. Mr. Koch states I understand that, once you move the line it makes an existing lot. Right says Attorney Pozefsky. I assume that somewhere in the code you are allowed to build an apartment above the garage? Fred Mann states yes, as long as you meet the New York State Codes. Attorney Pozefsky states to Mr. Koch that if the lot line didn't go through that garage, if it went right along the edge of the garage, they wouldn't be here. Fred Mann stated they actually have a permit to do some work on the garage and then they decided they wanted to add an apartment. That changed everything because it is on the same lot as the home is. That is when they found it was built on both parcels. Chairman Clarke asked Fred Mann if there were two separate deeds? Yes, stated Fred. Jeff Fedor asked Fred if we normally give permits to build on separate deeded properties? Not as a rule but they did on that one because of the garage being mostly on with the house property and a little tail on the other. He owns them both and he wasn't going to do anything with it. The garage was there, he wanted to remodel it, and it wasn't like he was building a new one. He took the trusses off the top and installed new ones because he wanted it for storage. I guess this is what gave them the idea to build the apartment for his father in-law. They all ready had the stairs on the outside of the building going up so this gave him more working room in his garage. Sigrid asks how many residents are there on that property? They're in that complex. Each one of them has separate lots. I believe

there are at least 5 different residences. These are all lots that were there prior to zoning going in. Chairman Clarke states if he recalls correctly 10-15 yrs ago there was some dumping on that land. They had some problem, with what would be Jay's father in-law Hovey owned it at that time, Palette's use to get sand out of there, that's how he lost the land, he was unable to pay the taxes. Linda stated that prior to that there was a situation where trucks were coming in during the night and all hours of the day dumping waste. That has nothing to do with that? Fred Mann states no, these homes are much closer to the road than where that was going on.

Chairman Clarke asks if there was anything else? Jeff Fedor asks if anyone had information on the up coming conference in January? Linda states to the board anyone that has not handed in their application please do so soon so I can fax them in and not have to pay the higher price and you are able to get into your choice of classes.

Philip Giordano makes a motion to adjourn the meeting. Jeff Fedor seconds. A roll call vote is taken.

Y Sigrid Koch, Y Jeffrey Fedor, Y Bill Clarke, Y Philip Giordano

4 AYES

0 NAYS

Meeting adjourned at 8:17 p.m.

Our next meeting will be January 6, 2008 at 7:00 p.m.

Respectfully,

*William Clarke
Zoning Board of Appeals Chairman*