

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

January 3, 2008

A meeting of the Corinth Zoning Board of Appeals was held on Thursday January 3, 2008 at 7:00 P.M. and called to order by Chairman Clarke.

Present : Y Sigrid Koch Y Jeffrey Fedor Y Bill Clarke Y Glen Tearno Y Philip Giordano Y Attorney Pozefsky Y Fred C. Mann Jr. Y Linda Hamm, Secretary.

Public: Dave Barrass, Fred Koch, Arleen Springer, Shelli Everts, Andrea Leclair and Vicki Sweet.

A motion to approve the December minutes with being revised was made by Glen Tearno and seconded by Sigrid Koch. A roll call vote was taken.

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

5 AYES 0 NAYS

Old Business: Mr. Emery returns for his public hearing in regard of moving the property line that runs through his garage. The garage shows to be on both pieces of property. Mr. Fedor asks since 1996-1997 that Mr. James Emery own, in which he had to purchase the second parcel from the County. Mr. Fedor asks if both deeds were existing prior to zoning? Mr. Emery states yes. Chairman Clarke asks if there are any changes since our last meeting? Mr. Barrass states there are no changes. Chairman Clarke asks if Emery Lane is a private road? James Emery states yes, since the (911) went into effect, our driveway became a private road.

Chairman Clark asks if Jay's Welding is James property? No, that parcel belongs to my father Jay. Chairman Clarke asks can this or has it been considered to be joined. Jay Emery states no that will not happen. Jeff Fedor asks Mr. Barrass if the lot is adjusted, the existing lot, the lot with the garage will be about 1/2 acre. That would be around 20,000-sq. ft.? Mr. Barrass states yes and it's zoned as residential which is 40,000

sq. ft, but as I remind you this property is existing prior to zoning. Mr. Fedora states he has a question in regard to this request. I am looking at page (8) in the Land Use Book, 4.2-C. It states. 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. I guess my question is, by doing this is the town creating a new lot? The one that is being reduced in size? If we do that the regulation state we are not allowed to. Mr. Barrass states that their opinion is that no lot can be reduced below the minimum. These two lots are all ready below the minimum. They have legal status as pre existing non-conforming lots. You could build on either one of them if there was nothing there. Problem is the garage is all ready there.

Mr. Fedor says that if he were to own a piece of property with a house on it and I were to sell a portion of it to my neighbor and there by make my land substandard would that be all right? Mr. Barrass states in my opinion that should be one lot, because then you are taking a standard lot and creating a substandard lot. Mr. Fedor states that I am addressing more the lot we are reducing than the lot we are expanding. Are we now taking a substandard lot in some ways and making it more substandard? Yes you are but you are also taking a substandard lot and making it standard. I think you are taking a bad situation and making it better and the better situation slightly worse. Again both of these lots are pre existing, and they are both substandard. Since they are both all ready substandard lots, we are just moving the boundary line between the two lots, and it's our hope that you will see we are not creating substandard lots but just redefining the line between two substandard lots.

Mr. Fedor states that when he asks these questions, that it is not just pertaining to this case, I'm looking for precedence. There has to be logic and reasoning. Mr. Fedor states he is asking the board as well, when a new lot is made whether it is standard or substandard from a grand-fathered piece of property, does that property whether it's expanded, doubled, tripled or reduced by half, does it continue to maintain this grand-fathered status? Attorney Pozefsky states that if you look at the letter I sent to the board at sections 5.2 which it talks about existing nonconforming uses and structures and how you can loose that status. It goes through a longer list like abandonment, certain alterations etc. So I guess you would have to look through that section. Mr. Fedor asks what is the percentage of this boundary line adjustment? Mr. Barrass states about 40%. Attorney Pozefsky states that it will still remain nonconforming. Attorney Pozefsky states to Mr. Barrass that the code talks about increasing or enlarging the floor area by 25%, would this increase the floor area upstairs by this much or more? Mr. Barrass states that there was a floor up there and it is used for storage, so no. Mr. James Emery states that actually there is no increase because the garage was existing the floor was there for storage. The truss size is actually 14 x 30 with this space inside. Attorney Pozefsky states so then we are just talking about increasing the lot size. Mr. Fedor states that it is interesting that you own both parcels. Mr. Emery states the reason I own both pieces is when my grand father owned the property he owed back taxes and the county took part at land auction. I built the garage, it turned out it was over my property line that I thought was farther back. I purchased the other parcel from the county, and now need

to move the boundary line so it is on only one piece of land. I would like to build an apartment upstairs for my in-laws.

Mr. Fedor states lets say I own a substandard lot. Would I be allowed to sell a portion of my substandard lot to my neighbor and there by making my substandard lot smaller? Attorney Pozefsky asks is your neighbor's lot substandard as well? Let's say its not. I don't think there is anything here that says you can't decrease an all ready substandard lot. What the code says if you recall from the last meeting is you can build on a substandard lot if you proportionately reduce the setbacks. If you were creating a new lot that would be different, but if you are just moving the lot line with a neighbor, it's not the same as this. But a similar idea. Attorney Pozefsky states he sees where the board is heading with this and maybe we will have to cross that bridge at another time.

Attorney Pozefsky states he believes that the Planning Board sent Mr. Emery to you to get an interpretation on weather moving this lot line does or doesn't take you out of the grandfather status. Chairman Clarke states he doesn't like setting precedence of approving a garage, apartment behind another lot off of a private road. This looks to me like a crooked one lot without subdividing it. Chairman Clarks asks the total of the two parcels if joined and it would be just a little over an acre. Now that would conform with the zoning. Attorney Pozefsky states that would only allow one dwelling. They would need a use variance for two dwellings that is virtually impossible. Sigrid states that reading this; it looks like that's the sense of what they are trying to do hear. Article 5, Section 5.2 paragraph A. The lawful use of any building, structure, or land existing at the time of the enactment of the Local Law may be continued although such use does not conform with the provisions of this Local Law. This provision is deemed to include manufactured housing communities/ mobile home parks, which may continue to operate under the conditions of lawfully issued permits. This allows it to be a garage, now we are talking about what size the property is, changing the use, which would be a use variance. Mr. Barrass states the even if we need a use variance we nee the boundary line adjustment. Mr. Fedor states that this brings up the other issue of this grand fathered piece of property. Mr. Barrass asks, does he not have the legal right to knock down that garage and build a house on that piece of property? Attorney Pozefsky states that under 89.40 yes he does. Mr. Barrass asks then why is this a worse situation than that? Other than the expense of building a house? I don't see where the logic is in all of this is because he didn't go out and build a new house there. Attorney states he would probably be allowed to do that if this had a clean line to begin with. Mr. Barrass states or we could move the structure totally onto the back lot and not even have to come to the Zoning Board at all. So why are we even looking at a use variance when he has the legal right to do that?

Chairman Clarke says there needs to be an easement across the existing property to get to the land locked piece of land. Chairman Clarke states that's the precedence he does not like. Mr. Barrass states an easement is very typical, anyone can grant an easement across their property. Chairman Clarke states by granting this I believe we are going to be creating a neighbor problem. This property could be sold to someone else with an easement through less than half an acre to get to their lot, seems to me that we would be creating future land use problems for neighbors and the tenant. Mr. Barrass

states that by the Planning Board regulations it proves that subdivisions that are similar to this are acceptable under the subdivision regulations of the Town. Attorney Pozefsky states that it is typically the buyer that would raise that concern and say, no I don't want the property if there is going to be someone driving through my lot to get to the rear lot. Mr. Fedor states that his question still is, is the grand fathering issue and how long does that status stay there. I understand that when Zoning was created it was because we had picked certain lot sizes that it would put hardships on people with pre existing substandard areas. So this grand father clause was granted so these people could utilize their land. But any time in the future I think it would expect them to use that land as is, with the grand father clause or expand their land or make it standard size. At what point does that grand father clause concept lost, is it ever lost. Does it remain if the owner buy's a little piece here and another piece there? How long does that stay with it?

Attorney Pozefsky states that there are certain circumstances, you don't add to it too much, you don't alter it too much. That's the concept. Hypothetically, how far do you go with it? This is giving you some guidance here by saying when you loose it you must apply for and obtain necessary variances to be allowed as to remain a non-conforming use. For example, if the 25% rule kicks in, that's a legislative intent. It says that now you getting a little too far away from that grand father size. So then we have to say, now you have to comply with the new rules. Maybe subject to the size of the lot is what you want to do with it. Mr. Fedor asks Attorney Pozefsky so that is part of that built in protection to say you can be grand fathered, with a little flexibility how ever it's not carte blanch. Attorney Pozefsky states that is correct. After you have reached this thresh hold you now kick into the new law. Sigrid states that it says, the lawful use of any building, structure, or land existing at the time of the enactment of this local law may be continued although such use does not conform with the provisions of this Local Law. This is only for the existing non-conforming use. Attorney Pozefsky states yes. Sigrid states this is only on the garage. Yes, states Attorney Pozefsky. I believe Dave's point here is if they didn't move the line at all and they just knocked the garage down, could they build, and the answer is yes under the code the setbacks may be reduced, but you could do it. There you don't have the 25 % expansion, you are taking the lot, just as it is and building on it. By adding the 25% you have to decide, does it take it out of the grand father? Attorney Pozefsky states that the Planning Board made the decision that it's non-jurisdictional for their purposes. Which means the small amount of land, it's not a subdivision. The question is, by moving the line does it change it from a grand fathered non-conforming lot? Mr. Fedor states another point, and I bring this up because in a commercial zone the minimum requirement is 40,000 for a residential home and in a residential zone it is 20,000. Attorney states, but that was a legislative determination. Mr. Fedor states he understands it is what it is. Mr. Fedor states that this land use in section 5 says " any nonconforming use, building or structure may be enlarged up to, " I don't see the word " land " here. But you are telling me the word " use " implies land size. Attorney Pozefsky states I believe so. Appendix "A" is the definitions. " NON-CONFORMING USE" Any use which is lawfully in existence within a given land use district on the effective date of this Local Law which is not in conformance with the use regulations of the district in which such use is located. It means the existence as of May 15, 2004. So if you put that in, it means the garage. So that you mean basically

that the garage use may be enlarged up to 25% of the floor area. Attorney Pozefsky states you may have two questions here. What was the use of the structure in 2004? That is what is grand fathered. Then you also have the question of does changing the lot size take it out of the grand father. Mr. Barrass states that we are talking about the lot, not the structure. Attorney Pozefsky states you are Mr. Barrass states we are modifying the structure, but first we have to make sure it's a grand fathered law. Attorney Pozefsky states that when you modify the structure you are also perhaps changing the use. Attorney Pozefsky states he is only raising the issues here. I see this as two separate things.

Glen Tearno states that what your starting out with is a non-conforming lot that has a building on it. Which is divided by part of that lot. So if you move the lot line it will give you still two substandard lots. Right? Attorney Pozefsky agrees. It allows you to have a garage on one piece of property. The use for that garage would that be a non-conforming use? Just for the substandard lot? Attorney Pozefsky says I think what you need to decide is what was the use on May 15, 2004? Glen states a garage .Now what they are proposing today, is that different from that use. If it is different, which it apparently is, that would seem to trigger a use variance. So at the end of the day and all is said and done. You move the lot line, you still have two substandard lots and you can build a house on a substandard lot. Mr. Fedor states he is trying to understand that it loses its grand father status. It says here the if you increase your not allowed to take the substandard grand fathered lot after 25%. So I am just saying, is this what we believe and is this what the law is stating and then what does that law do afterward? We just need to make sure all the i's are dotted and t's are crossed. Attorney Pozefsky states that moving the lot line is not affecting the use. It will still be a garage on the land. After the lot line adjustment is where the use makes a change to an area variance for the inside of the garage.

Chairman Clarke states that he thinks there should be a use variance if were going to approve two lots. Just with the notion of a single-family dwelling. Then an apartment over a garage. It seems to me that it is a separate issue. Sigrid agrees with the Chairman. I keep coming back to this land use activity. I don't see how, no matter where the line is you would not ask for a use variance. Mr. Fedor states just so I can separate this in my own mind. There are two questions before us correct? First is the interpretation to move the line. My thought on this to get the interpretation out of the way because what happens after that point can be done anytime. I think we need to tackle one thing at a time. Sigrid states that she sees they conveniently didn't pick the definition for grand fathered. I think that is the boundary block. I think grand fathering is, "as was" quote UN quote. Mr. Tearno states that if that is the way you are going to look at it that way then you have to look at it as a singularly focus on the interpretation, you start with a substandard lot and you end with a substandard lot. Sigrid states, but not the same size. Mr. Tearno states that the over all acreage is not going to change with the two lots that are there. Right now the owner has a garage that is split in half on two lots. Chairman Clarke says but he owns both lots. Yes, you can see that, he has a deed for both lots. Chairman Clarke states conceivably. Mr. Tearno states if you adjust that line you have two substandard lots. Same as he does today! Nothing changes. That's

the first interpretation you need to work with. After that you can get into weather it becomes a house or what ever you want to do there. But you have to decide if by moving that lot line it is no longer a substandard lot. If it is not a substandard lot then what does it become. Sigrid states that she believes that the whole reason for moving the line is because they want to change the use of the garage. Chairman Clarke states, that is not what we are asking for here. All we are asking for is an interpretation of that law. Chairman Clarke asks the public if they have any input or comments on this deliberation? Mr. Fred Koch agrees that it is about the line, it's still going to be a substandard lot. As Jeff said, is that 25% enough to change to the new regulations? Jeff Fedor states that it's not even about if they can move the line. Yes they can, it's about how we determine the grand father, is it still grand fathered, or does it loose the status. Attorney Pozefsky states to the board that he thought they had decided to look at just the use, the use of the structure or are we talking about the actual lot it self. You might be able to make a decision here by saying; in this case looking at just the use of the structure that's involved then it would remain non-conforming. But if you are talking about the over all use of the property then your adding more than 25% and does that take it out of the grand fathering? So I guess your first question how far does the use extend that is currently being made? Then that will take you down one of two roads, either you loose your grand fathering status or you don't. That might be the first way to look at it. If you move the line entirely and make it one conforming lot, they will have to request a use variance to make the apartment over the garage because you would have to dwellings on one lot. Generally zoning tries to solve problems with out making it more difficult for the applicant. If possible. If you can interpret the situation clearly setting a pier precedent with out forcing it into another situation that's zoning. My experience has been sometimes that's what zoning likes. What we are dealing with here is a grand father situation, you would be interpreting it to be taking them out of the grand father or forcing them out of the grand father status and forcing it into a conforming area, now you have to get a use variance.

Philip Giordano makes a motion that the adjustment of the boundary line of the two existing substandard lots will not nullify the status of the lots that are pre-existing. Glen Tearnò seconded and a roll call vote was taken.

Y Sigrid Koch Y Jeff Fedor Y Bill Clarke Y Glen Tearnò Y Philip Giordano

5 AYES 0NAYS

Mrs. Shelli Everts returns for a public hearing of a possible use variance to continue using the second dwelling on the same piece of property. Chairman Clarke asks Mrs. Everts to please explain her case. Mrs. Everts states one thing that she wanted to shoot out to the board is its history. Chairman Clarke asks what year they purchased the property. Mrs. Everts states on November 3, 2003. My father in-law lived in the cabin until he died . People have been living in it since. I included a map with my application for you to see the setbacks. As you can see the cabin more than meets the setbacks. It is 91' from the back property line and 84' from the side property

line. The cabin is 303' from my house.

Attorney Pozefsky states that just for the board's information I apologize for sending the board such a long letter. There were three points and time that I mentioned in my letter one was the January 2000 question, had the use ceased prior to that? Because if it had, the way the code seems to read is a little puzzling. It says the if you stopped using it before January 1, 2000, you loose it. Not quite sure how that works because zoning didn't even go into effect until 2004. Attorney Pozefsky addresses Mrs. Everts and says in 2004 you had all ready owned in 2003. Mrs. Everts states correct. The cabin was there and it was being used as a residence. Correct! Mrs. Everts states that it was the reason she bought the property. It had the main residence and my husband and I had the cabin for his elderly father. Which is not an accessory use states Attorney Pozefsky because, we all ready decided an accessory here, meant principal and then some other accessory use. Right, stated Mrs. Everts. Then friends lived there until their home was finished being built.

Attorney Pozefsky states so then it seems to say, if living there from June 15, 2004 and the two years up to June 15, 2006 to see if the activity stopped for that two years. If it did, then again you loose your former status. So then that would be the next question. Mrs. Everts states that after her father in-law passed away July 21, 2004 and I can't remember the exact dates but it was some time in October 2004 that friends of ours came to stay they were living with her parents and trying to build a house, things were getting just a little crazy so she came and stayed until February of 2005. Her parents went to Florida so my friend moved back into her mothers house for two months, while they were in Florida. I want to say until maybe May. Then in August 2005, my husbands cousin moved in with his girlfriend. They stayed until June of 2006. They purchased her fathers home in Mechanicville.

Attorney Pozefsky states interestingly your code does not have a provision that says if you stop using it for 6 months or a year or anything, at any point you loose it. Most towns have that. It also has this 2 years from enactment of the law forward if you stop using it you loose it. So it is very different that way. That's probably why I wrote the letter to let you see there wasn't even a 1 year window any where that it stops. It's not in this code. It really only talks about from June 15, 2004 to June 15, 2006. If it was used at any time during that period it keeps it's grand father status. Mr. Fedor asks even if only used for a day! Attorney Pozefsky states yes, it just says inactive. There is two years to resume it. There is no definition of resume no definition of inactive you just have to use common sense. If you used it one day arguably that might be enough. Sigrid asks, does the status change though? I mean there is no financial gain. So that means it can't be used as a rental property? In her use variance she has no financial gain. Mrs. Everts states that there is no financial gain. The last family there was a family of three. I asked that they pay for the propane for their heat and hot water. Attorney Pozefsky states he does not believe that the profit verses the non- profit is an issue. Even though Mrs. Everts put that in her application. The code talks about the use. Sigrid states, occupancy? Yes, states Attorney Pozefsky. If it were occupied that would be the use, as a residence whether it was for profit or not. I don't think is an issue. You might be able to draw a fine line there. Sigrid states that is what she is talking about. If I was to have a cottage on my property and my family came for a

month, that would be different from renting it for a month and using it as a residence. Attorney Pozefsky stated he researched that because one of the concerns was, seasonal use verses full time use, for profit verses not for profit, weekend use. My research indicated that it's not necessarily the duration of the use or the frequency of the use, it's the use. So when it's used and if it's used as a residence then it's a residential use So whether it is being used on the holidays, or weekends isn't what the case is focused on. Your just looking at the use as a residence. They don't get into generally profit for profit. What do you do with it when you use it?

Sigrid asks if it is a residence, doesn't it need a certificate of occupancy? No, this building was pre existing . So I think the answer to your question is on the face of it she does not need to get a building permit because it is grand fathered under Chapter 63. Attorney Pozefsky states that the next question is, is the use grand fathered under Chapter 89 which is your job. Mrs. Everts stated that the cabin is insured on her home policy. I have a separate policy for the barns for the horses. The cabin is included in the assessment and I enclosed a picture of the cabin which is only a 12 x 20. Mr. Fedor asks so as part of your residence it is grand fathered and your not turning into a mechanic shop, home occupation or other business? No, stated Mrs. Everts. Anything that has to do with home the business is on a different part of land. Mr. Tearno asks what kind of business is this again? Mrs. Everts states they are looking to build another barn and start a training facility. Sigrid states that's not on this application. Mrs. Everts states that it is on a separate parcel of 7 acres.

Chairman Clarke states to Mrs. Everts in regard to the public notice were all the cards turned in? Who were the notices mailed too? Mrs. Everts states that if you look at your map, it was Mark Plummer, Vicki Sweet, John Torda, Tom and Corky Normile, George Choate, Patrick Murphy, Andy Kelley I didn't get anything back yet from Daryl Chandler. Mrs. Everts states that Vicki Sweet is here. Chairman Clarke asks, did you send a public notice to Andrea Le Clair? No, stated Mrs. Everts. She was not on my list. Linda gave me the list and she was not on it. Mrs. Everts states to the board that Mrs. Le Clair does not boarder her property. Mrs. Everts shows the board members on the map which parcel will have the new barn for the business. Mr. Fedor asks it is separate for the horses. Yes, states Mrs. Everts. How many horses? Fred Mann states you have to have one acre per horse, large animal. Mr. Fedor asks if she is aware of the tax break for boarding facility's? Yes, I am but it's not going to be a boarding facility. It will be a training facility for quarter horses that are in training. Chairman Clarke asks if it's a stable? No, it's not a stable and riding academy, let's not even open that can or worms, it will be a training facility for quarter horses in training. Fred Mann reads the code to the board in regard to large animals. Sigrid states that this means a maximum of (6) six horses would be allowed. Fred states yes, unless they got a variance. Mr. Fedor states, that's a separate issue. Mrs. Everts said that's right, it has nothing to do with tonight.

Attorney Pozefsky states, Mr. Chairman as kind of loaded as all of this started out to be, I think it is relatively straight forward if you are looking at the use of the cabin on June 15, 2004 which apparently was a residence. Whether or not they continued at any point in the next two years, which she has indicated that on and off someone was living in the cabin. Attorney Pozefsky states it is a grand fathered

residence usage. Chairman Clarke asks Mrs. Everts, who was living there on June 15, 2004. Mrs. Everts states her father in law. Was he there the day after that? Yes ! The only way to get to this cabin by vehicle is the only place you drive pass is my house. If anyone would like to contact me and come see it, I would be more than happy to make arrangements and show you. But you do have to call me because I have large dogs. Sigrid asked is she was able to contact the seller, Attorney Pozefsky stated that the first thing the board needs to do, as I understand it , look and June 15, 2004 on that day, what was being done? It really is that precise. Chairman Clarke asks, what was that? What was happening on that day? Mrs. Everts states on June 15, 2004 Wilbur Everts my husbands father and his girlfriend Susan Croftman and I believe her son Denny was staying there with them on week ends. Denny didn't live there he come on the weekends. They did. Chairman Clarke states, your father in law. Yes, and his girlfriend. Mr. Fedor states that the time line would be great, the time frame and use at that time, I think would help me out a lot. Just hearing it, it kind of goes in and out. Mrs. Everts asks for how long, from June 14, 2004 to the 15th of 2006? Mrs. Everts said sure, I'll do up a time line . Chairman Clarke asks if there is anymore public hearing? Vicki Sweet from the public asks if she could leave a list of objections . Chairman Clarke states yes. Ms. Sweet stated that she was considering purchasing the property but was told she couldn't rent the cabin it was to be used as a guest house. When I was getting an appraisal they all asked if the cabin was mine? That is how close it is to my property. From my back deck you can see it. It lowers the value of my home and vacant property I have up for sale.Shelli does collect money from the people. Mrs. Everts states the money she collects if to pay their share of the electric bill as both buildings are on the same line. Vicki states she was even going to let a sex offender stay there. I have a young daughter and so do other neighbors. It's not right.

Attorney Pozefsky states there needs to be more research done. Sigrid makes a motion to adjourn the meeting and Glen Tearno seconded. A roll call vote was taken.

Y Sigrid Koch Y Jeff Fedor Y Bill Clarke Y Glen Tearno Y Philip Giordano

5 AYES 0 NAYS

Meeting adjourned at 9:00 P.M.

Next meeting will be held February 7, 2008

Chairman, William Clarke