

**TOWN OF CORINTH
ZONING BOARD OF APPEALS
600 PALMER AVENUE
CORINTH, NEW YORK 12822
FRED C. MANN JR.
ADMINISTRATOR**

**William Clarke
Chairman**

**Sigrid Koch
Vice Chairman**

Jeffrey Fedor

Glen Tearno

Philip Giordano

**Draft
March 6, 2008**

A meeting of the Corinth Zoning Board of Appeals was held on Thursday March 6, 2008 at 7:00 P.M. and called to order by Chairman Clarke.

Present: Y Sigrid Koch Y Jeffrey Fedor Y William Clarke Y Glen Tearno
Y Philip Giordano Y Attorney Pozefsky Y Linda Hamm Secretary

Absent : Fred Mann with excuse.

Public: Shelli Everts, Jim Hamm, Michelle Wyman, Arleen Springer, Fred Koch

A motion to approve the February minutes as written was made by Glen Tearno and was seconded by Jeffrey Fedor. A roll call vote was taken.

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

5 AYES

0 NAYS

Old Business: Mrs. Shelli Everts returns for her public hearing for a Use Variance in regard to her cottage.

Chairman Clarke states for our old business I would like to open the public hearing for Mrs. Everts. Secretary Hamm lets the board

members know there is additional information that goes with this application. There are typed pages with the responses to the use variance questions from the application. Chairman Clarke asks Mrs. Everts if she has anything else she would like to add? Mrs. Everts states, I just tried to answer the questions for the use variance. Mr. Tearno states to the board members that he feels they should start with point number one read it and discuss it and move on. Chairman Clarke agrees and Mr. Fedor states to the applicant that she needs to keep in mind that all four points have to be discussed and all four points have to be met. Mr. Tearno asks Mrs. Everts with the costs you have listed here, are there any other cost you can think of you can occur because no one is living in there? Mrs. Everts states just the general up keep. Maintenance, I still have to have electricity and I still have to have heat. If the cabin is not heated the pipes will freeze and the cabin would deteriorate and eventually have to be torn down. Sigrid asks why do you have a cost for gasoline? It is heated with propane you said. Mrs. Evert's states for the cost of snow blowers, plowing leaf blowers. You need to keep it clear for fire trucks and emergency vehicles, god forbid they are needed. Mr. Fedor asks about the homeowners insurance. On your list you have a 03 then a 08 list. Is that your total homeowners insurance bills, or do you have a separate policy for the cabin? It's the full premium with the cabin. Same thing with the taxes? Yes, same thing with the taxes. Mr. Fedor states with looking at this we don't know what portion of those taxes are for the cabin. Mrs. Everts states to eliminate the bottom two lines there. The bottom line is with having someone in the cabin it helps if we get an extra \$50.00 a month it helps to pay these costs.

Sigrid asks if she can just clarify and go back to step one. This use variance is for it to be used as a rental property? Is that what the use is? Mrs. Everts states no, it is to continue being used by family, family friends and people that have been referred to us. This will not be advertised as a rental. Sigrid states yes I believe we had discussed that and it wasn't whether you publicly advertised it or not, its a rental. Sigrid states you are still receiving money. Do you get any money above and beyond what it cost you to maintain it? Mrs. Everts states of course, because I can't anticipate maintenance cost. Mrs. Everts states this doesn't even include our time in maintaining the cabin. Sigrid states as a property owner it is your responsibility to maintain the buildings and property. No one gets paid for mowing his or her own lawn. So I don't see the maintenance of your piece of property has anything to do with our decision. Mr. Fedor states he believes that one of the things you have to understand here is this first point on the use variance. What it is saying because of the zoning

that this piece of property falls under, as the definition we gave last month that's the zoning it falls under now, just to refresh my memory and the boards memory, it was grandfathered for a uses as an accessory structure specifically a guest cottage not to be held for rent or for hire and to be used for family members of the principal resident. That is what the board came up with. Mr. Giordano asks on that point can we go back to the use variance application? She has occupancy on it and I think what we are looking at right now is changing the use variance from a guest cottage to a rental. Mr. Fedor states that to do that she has to meet this first point for the use variance. She has to meet all four points but needs to meet the first one in order to continue. There has to be illustrations of financial hardship and that there is really no other way she can realize a reasonable return on this property. If she is held to the decision that was made at the last meeting. Mrs. Everts explains to the board that either her or her husband has any family left that would utilize the cabin. She just lost her father a week ago yesterday and now there is no one. It means that based upon your decision last month, if we can't continue using it the way it had been after my father in law had died, with family friends, out of town people staying in it when someone is not living in it full time then it becomes up to us to absorb the cost heating it and continue the electricity, which is going to be a cost no matter what and doing repairs on it with no money coming in what so ever. If the furnace breaks costing \$225.00 a pop, that's the financial burden. By having someone living there who pays the direct related costs by living there, it relieves me of that pressure.

Mr. Fedor states he would like to express his sympathy of the loss of her father last week. We are looking at the first point of realizing a reasonable return and we have to meet all four points here. You are presenting these bills here; several of these bills like the taxes, the homeowner's bill, and these are not pertinent to this. Mrs. Evert's states so eliminate them, I still have to heat it and have the power there. Mr. Fedor states they will be very minimal with no one living there. Mrs. Everts states no, you still have to heat it, other wise it will fall apart. As I explained to you at the other meeting, there are no shut offs for the water going there. I would have to shut it off at the main house. This is the only shut off and it would shut off the water to my animals. So that is not an option. Did you seek a realtor to see if you could sell your property? Mrs. Everts states she does not want to sell her home. We searched all over for a year and a half. No I don't want to sell my home. If you take that away from me now, probably in a year or two it's going to be crap. I'm not going to be able to maintain it. Chairman Clarke states that based on last

months decision it was noted as a single family neighborhood, and that the cabin is to be used as a guest cottage for family members. Without having a separate deed it is only allowable if it is a direct family member. Conceivably you can drain the pipes. Mrs. Evert's states if she did that shut the water off for the winter, she would have to dig the yard up as the only shut off is at the house and that would shut the water off to the animals. Chairman Clarke states that it is this board's view that this is a guest cottage, not another primary residence. Mrs. Everts, states that is why I am here, because I am asking for the use variance to continue the use from June of 04 the way it was used up until today.

Sigrid states, again I come back to my point. We determined it was an accessory structure to be used as a guest cottage. You are looking at the use variance to make it into a revenue generating residence. So that you are paid and have some money above and beyond that. So that is the purpose for this use variance. Mr. Fedor states that you say in your application, that if this is not granted the use is now changed to a generated rental portion of your property, then you are going to incur substantial financial hardship. Yes, stated Mrs. Everts because I am not going to be able to maintain it. Sigrid states she doesn't see the cost to maintain it there. Mrs. Everts states if the roof blows off, yes I know the homeowner is responsible for mowing plowing. What I am saying is the extra few dollars I get helps with the major expenses. Then maybe I should let it fall into an eyesore like the barns around town, with holes in the roof's and it collapsing. I don't want it to fall into a state of disrepair, but you know what? If nobody can live there and pay me to help offset the cost of having that cabin there with the maintenance of it and the daily use of electricity and propane. Mr. Fedor states if you have a family member living there that fits the requirements. Mrs. Everts again states, I have no family my husband has no living family. Mr. Fedor states, that if you don't have any family that fits the requirement as of last month's decision then you would have to shut it down, and I do understand there are restrictions to doing that right now, but any responsible owner that would have an accessory structure with water or any kind of plumbing going to it, you may have to install shut offs or remove the electric power or drain the piping. That would be a decision totally up to you if you want to maintain the integrity of that structure.

Mr. Fedor states he also wants to go back to point number one. We have to consider all points. Realize a reasonable return substantial as shown by competent financial evidence. A substantial

return on this property will not be realized if you can't rent to other than family members. The evidence has to be presented, and that does include the sale of the property. That is another issue that needs to be brought up. Are you saying that if you can not rent this out to people other than your family, you wouldn't be able to sell this place? Mrs. Everts states I don't want to sell my home. Mr. Fedor states we have to consider what you are telling us is that, you can't even sell this property right now. If I try to sell this to anybody and tell him or her they can't rent out the cabin. You can only use it for family use, you wouldn't be able to sell it! Mrs. Everts states she was never told about this and didn't know anything about these points. I was told about the four points. Linda the secretary stated to Mrs. Everts that they are the same four points. Mr. Chairman the board has a different sheet than Mrs. Everts has. Chairman Clarke states to Attorney Pozefsky if they have to review all four points? Attorney Pozefsky states that if any of the points can't be met you are done, because you have to meet all four. Chairman Clark asks if they need to vote on each one? You probably should states Attorney Pozefsky. Chairman Clarke states it is clear to him that the applicant can't prove a reasonable return by some financial evidence and a lack of return must be substantial. I think the answer to that is clear enough. Mr. Fedor states therefore the lack of return is non-substantial.

Attorney Pozefsky states if you vote on the first one, that, that element isn't met you don't go any farther because they have to meet all four. Mr. Tearnos asks the applicant, so you have never seen anything about a bill of sale, or a realtor? No I haven't. You have also mentioned that now you have seen that, you could produce that? I don't know how am I going to get a bill of sale with out selling my property? Mr. Tearnos states that, that was just one example. Mrs. Everts states what the value is and what I could get for it if I sold it, doesn't matter to me, because I don't want to sell my home. Mrs. Everts states what it sounds like is you are telling me is, I have no family I'll never have a family, I can't have family live there so sell it and get the - - - - out and go some where else. Chairman Clarke states we are telling you Shelli that you have a guest cottage there. Mrs. Everts states and what I am asking for is to keep the usage as it had been used for the last four years Mr. Clarke. Mr. Fedor states Shelli what you are asking us is to do is revisit our decision from last month. Also you are asking us to say that this can be a rental property. Mrs. Everts states no I am not. What I am asking you, is to put the same restrictions as you did when stated, not for rent or hire. So it can be used and not publicly advertised. You want us to say not for rent and how would you show any income to meet these

substantial burdens? Mr. Pozefsky stated that not for rent or hire meant not to publicly advertise. Attorney Pozefsky states he does not remember that. Shelli stated that, this was why she was okay with it. Attorney Pozefsky states he believes Mr. Fedor had a different view of that last month when he made his motion. Because I had actually said something about profit and the board wasn't fond of that term. Mrs. Everts asks, what is a reasonable return. If I get \$20.00, that's good for me. Mr. Fedor states he is trying to put this as clear as possible. I don't think there is any way to put into words for family and friends that wouldn't be a profit. I don't know how we could even do that. So really what we would be saying is a use variance that makes this a rental structure. That's what this would be and would carry with anyone that owns that land. Mrs. Everts states, but that is what it has been. Mrs. Koch states no. Mrs. Everts states yes, only because you issued a cut off date of June 15th and my father in-law didn't die until four days later. You went by that specific date, even though you asked me to provide a two-year timeline, which I did. I provided the timeline prior to the zoning and up until the current use.

Mr. Fedor states to the Chairman that he feels like they are being asked to revisit this decision that we spent time making last month. I would like to go back to point one and the point you made and that is I don't believe there is sufficient evidence here that a reasonable return can not be realized on this property. If the decision that was made last month holds up. I believe the lack of return is not going to be substantial and an insufficient amount of evidence has been presented. Chairman Clarke agrees. Chairman Clark asks Attorney Pozefsky what their timeline is as far as this decision? Attorney Pozefsky states if you want you can keep the public hearing open until next month and see if she can present more evidence. Chairman states he believes that is what the consensus of the board and that number one and all four points be met. Chairman Clarke asks Mrs. Everts if she wants to continue with this application? Mrs. Everts asks, your telling me that none of my evidence meets any of the guidelines? Mr. Fedor tells her he believes they have gone in quite some detail of point one I won't make any judgments on 2-4. My recommendation is if you so choose to come back to get with the Building Department that will give you as much guidance as they can so that your not surprised if you decide to continue on. Attorney Pozefsky states to the board that he has spoke with Shelli's attorney a couple of times and I would be willing to continue doing that if you want. Chairman Clarke states to Mrs. Everts that we are going to continue to keep this public hearing open. Mrs. Everts asks Attorney Pozefsky if after she speaks with her attorney, if she feels that there is

noting to gain, do I contact you? Attorney Pozefsky states to contact Linda and let her know you are going to withdraw the application.

Chairman Clarke asks if there is any new business. Linda states yes, there is Mr. Hamm and his daughter appearing for a use variance. He would like to subdivide his property on Hamm Road and place his daughter's mobile home there. He would be able to meet all the requirements for acreage and setbacks. This is zoned as R-3 and not for mobile homes. There is a letter attached on the application from Fred in regard to a visual of the property. Mr. Hamm has spoke with Cheri Sullivan at the Planning Department and everything is in line there. Mr. Hamm is on a timeline and if the variance is approved he could move forward and be complete by the deadline set. Chairman Clarke states they will have to put you on the agenda for next month for a public hearing. Chairman Clarke asks if he is willing to discuss some with them a little tonight? Yes, stated Mr. Hamm.

Sigrid asks how much property are we talking here? Mr. Hamm states that all that is required in that zone is (1) acre of land. Sigrid asks how much property do you have here. Mr. Hamm states there is 3.2 acres and they will be made into 1 acre each. The driveway for the back piece of property will run along my property line. Sigrid asks if this would be connected to your property. No they will have their own septic and may possibly be connected to my water temporary. Michelle, Jims daughter stated they would be using the septic tank from where she lives now and running all new leach. If it is insisted upon I will put in another well. Sigrid states that one of her concerns is that one of the statements says those Woodcrest Acres will not put the mobile home in their park due to the age. Michelle states it's a 1980 mobile home. Secretary states that it is up to the mobile home park owner as to how new or old of a mobile home they will allow in their park. Mr. Hamm states it just had \$10,000.000 worth of improvements done to it through the HUD Grant. Mr. Fedor states because you were here for the previous case, you are asking for a use variance for the mobile home correct? Yes, states Mr. Hamm. In a use variance you are required to meet those same four points. As pointed out by our Town Attorney, you do have to show sufficient evidence, financial documents to show you will not be able to show a reasonable return unless this variance is granted. You have to show the hardship. Mr. Hamm asks are you saying over the next 100 years, I am not going to be alive that long Mr. Fedor states that he is just stating what is on the application. Chairman Clarke states that use variances are very difficult to get, so you're really going to have to complete all four points. You're going to have to get with the building

department to make sure these are addressed.

Michelle states that she is the one with the hardship. She is living on another piece of property and not realizing it was in the Adirondack Park. She also received a grant for improvements for the home and needs the property to place the mobile home on. We have no where else to go. I still owe money on it and the cost of the grant. Mr. Fedor states they are difficult circumstances for sure, but when we look at hardships, the hardships are specific to the property, not to a specific person's plight. That's what we look at. Michelle states it sounds virtually impossible to get a use variance. Attorney Pozefsky states, use variances are very difficult. They require a lot of financial and other evidence and I know if you have an attorney available who has done this before they can walk you through it. It's not really the board's job unfortunately to tell you how to do what you need to do.

Mr. Hamm states he has been paying attorney fees for ten years to get out of what the town got me into in the first place, by granting me permits and telling me it was okay what I was doing. So where do I go. Chairman Clarke states the he suggests you get with Linda in the building department. What can she do? What exactly are you asking for? Chairman Clarke states you have to meet the four points for a use variance. As Attorney Pozefsky indicated was, a use variance is very difficult to get we have zoning now. A use variance over rides the zoning. So the information you present to us should be exactly why we should over ride the zoning for your specific instance. Sigrid states, that in preparing for tonight, one of the points in our Land Use Law Chapter 12 12.3 E our decision has to be made to be consistent with the master plan objective. When zoning was put into place it was determined that there wouldn't be anymore trailers in this particular area, and R-3 where you are is residential and it does not allow for the mobile homes to be there. Which the use variance you are seeking, we have to say now that the mobile could be put on this property. Mr. Hamm states that they are all mobile homes there now. Sigrid states that those are pre-existing. You're looking for subdivision for a new mobile. We do not want more mobile parks that are all ready in existence. That's where this use variance is, you have to prove to us that there is no other way you couldn't put a stick structure on that piece of property. That would be no problem because you have sufficient land, but it is a case of moving this mobile from one piece of land to another where it is not allowed. You have to prove the financial hardship and the other three points in the use variance for us to be able to determine in your favor.

Mr. Hamm states financially I can't afford another attorney.

Financially I am not going to pay for a survey either again; I am not going to pay for a survey for the Planning Board until I get some kind of an okay that says I can do this. I have all ready spent thousands of dollars to put the two homes in place. The town gave me permission to do this they gave me the permits they gave me the certificate of occupancy for them. Come to find out, the people that did it apparently didn't know their jobs and now according to the Adirondack Park Agency we have to move it. So again we are in the same situation. I am here for the what ever to get this girl a place to live. Why did the Town of Corinth grant her a \$10,000 grant and put a new roof on her mobile new windows etc that she can't even put into a mobile home park. Mr. Clarke states he understands his position Mr. Hamm. No I don't think you do states Mr. Hamm. Secretary Hamm states to Mr. Hamm to come to the office tomorrow and I will give you more paper work. I will give you another copy of the requirements for the use variance and a copy of the paperwork the Zoning Board members have with them tonight. I will review it with you. In regard to showing the first point in a use variance, continuing down to the next three. Fill them out to the best of your ability.

Chairman Clarke asks if there is any other business tonight? Board members have anything? Glen Tearno states he had the good fortune of attending the Association of Towns Conference in New York City. I got a lot of good information for zoning and planning. There were a couple of good zoning classes. One in particular about zoning approvals with conditions. Which is timely and relevant. Chairman Clarke stated that in a meeting with the Supervisor it is in the town by laws that we meet with the Town Board at least once a year possibly twice a year for 5-10 minute presentations of classes that we attend. I don't want to discourage anybody from attending classes but if you could just give a quick briefing of the class that you are attending. I think it might help educate them to see some of the challenges that we face as a Zoning Board. The town is spending good money on these classes and feels we should share this information with them. Mr. Fedor asks Chairman Clarke if there is any progress with finding an alternate. Chairman Clarke states they have several good applicants and will be doing interviews soon. It's a matter of me sitting down with them.

A motion to adjourn was made by Sigrid Koch and seconded by Philip Giordano. A roll call vote was taken

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

5 AYES 0 NAYS

Meeting closed at 8:07 P.M.

Next meeting will be held on April 3, 2008

Respectfully submitted,

Linda Hamm
Secretary

Chairman, William Clarke