

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

**June 7, 2007
Zoning Board of Appeals Minutes**

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

Present: X Sigrid Koch X Jeffrey Fedor X William Clarke X Philip Giordano

Absent: Glen Tearno with excuse.

Public: Fred Koch, Arleen Springer, Duane Allen, Walter Schlesier

A motion was made by Philip Giordano to accept the minutes as written, Sigrid Koch asked that a correction be made on page (3) where it states Again Sigrid. The secretary states that the correction will be made. Jeffrey Fedor made a second. A roll call vote was taken.

X Sigrid Koch, X Jeffrey Fedor, X William Clarke, X Philip Giordano

4 AYES **0 NAYS**

Old Business: Mr. Walter Schlesier returns for a public hearing to build a garage and is unable to meet the setbacks.

Attorney Pozefsky states to the board that the legal ad needs to be read to the public by the secretary. Linda read the legal notice into the minutes. Member Philip Giordano states he needs to recuse himself, because Mr. Schlesier is his neighbor. As a neighbor and part of the public I have no problem with the project.

Chairman states he was able to stop by on Sunday and take a look at the proposed project. Looking at it to me 15' looks a little close but I understand that a primary residential structure could be 15' in that zone. Is that correct Fred? Yes, that is correct 30' front and 15' side and rear. Accessory building is 30' front, side and rear. Chairman Clarke states he really didn't see any objection to it and there is some buffer on the neighbors side there. Sigrid asks Mr. Schlesier if this is a pole structure? Mr. Schlesier states yes. Conventional stick built garage. Chairman Clarke asks if this is going to remain a dirt floor or are you putting in concrete? Mr. Schlesier states for right now it is going to remain a dirt floor. I just want to get everything out of the weather right now. Mr. Fedor asks what about power or plumbing added to that? Mr. Schlesier states at this time I am just looking to get the equipment inside, at this time I have no plans for that. Mr. Fedor states in looking at the building here where you propose to build it, the front right corner how far with that be from your home? Mr. Schleiser states that to the corner of his existing garage it's 20'. There's just about enough room to get a piece of equipment through if I have to because of the septic system being in the back. Mr. Fedor states so if you met the setbacks you would be a few feet to your house. Mr. Schleiser states that if I have to meet the setbacks it would put it almost on top of my house. Mr. Clarks asks, the structure is going to be behind the house? Mr. Schlesier states yes. Sigrid asks, are you going to have a driveway extending from the existing driveway? Mr. Schleiser states he is just leaving it for right now. There is no real need for a driveway to there because I am just storing the 4-wheelers and equipment in there. Mr. Fedor asks Mr. Philip Giordano if his primary residence is the 30' from the property line? Mr. Giordano states yes. Fred Mann states he met the setbacks when he built at that time.

Sigrid makes a motion to approve the 15' setback for the pole barn. Jeffrey Fedor made a second. A roll call vote was taken.

X Bill Clarke X Sigrid Koch X Jeffrey Fedor

3 AYES 0 NAYS

Secretary states to Mr. Schleiser's variance has been approved and to please stop by the office to fill out his building application.

Chairman Clarke asks that the record show that Mr. Philip Giordano is now back on the board. Chairman Clarke asks if this is a public hearing for Mr. Eggleston. Linda states no, last month Mr. Eggleston did not show up for the meeting and his case was tabled until this month. Linda states that I sent Mr. Eggleston a letter from last months meeting and let him know he would be on this month's agenda. I also called his home this afternoon as a reminder. Mr. Eggleston was unable to come to the phone so I told Mrs. Eggleston that he was on the agenda for this evening and that the Zoning Board meeting would start at 7:00 P.M.

Attorney Pozefsky states to Chairman Clarke that the code requires that the applicant or someone representing them to be present. With out him being present I don't think the board should take action. The only possible concern is the (62) sixty-two day time limit after the public hearing is closed. Because there has been no public hearing scheduled and he has not appeared, there really is no time limitation that the board has to follow. I would recommend that the secretary, sends again another letter to him saying the board will take no action, and can take no action on his application with him not being present.

While were on his subject, I would like to fill the board in a little bit about a couple of things in relation to Mr. Eggleston's application in general and other issues that have come up. Mr. Eggleston has been asking for an area variance for this additional mobile. One of the questions that might come up is whether or not that is an accessory structure which would not require a variance. It's really not an accessory structure. At least I don't feel that it is. I think it has the potential space to be lived in. So I do think it needs an area variance. I think the board needs to keep this in mind because it seems to be coming up with some frequency, you get these two structures on one property and how do you classify them? You remember a couple of months ago there was the case of the hunting lodge. I believe it was Lance Gregory. They had the one lodge and they wanted to build another lodge. The question came up, can we call it an accessory structure, which would not require a variance, just a building permit. We decided that it required an area variance. If you think about it, it is not an accessory, they wanted to build a second dwelling like the one that was all ready on the property. It's really not an accessory structure because it can be lived in.

Now if you think about Mr. Eggleston's application here the principal use is a residence and this other structure is for storage, but it has the potential to be a residence. So I think when the board looks at these two building situations, you have to look at what's the principal use, and what is if any, the accessory. Is it really accessory to the principal use or is it really another potential residence for example. Which is an accessory it's kind of a stand-alone separate thing. If it is truly a storage building or something no one could live in say 3x5 truly a storage building, truly accessory to the principal and no one could possibly live there, it's an accessory structure and it doesn't need a variance, as long as it is permitted in that zone. On the other hand, if it's a trailer it may be being used for storage now, but it could literally cleaned out and set up and somebody could be living in it, I think the board has to look at that carefully. Maybe error on the side of, this could be a residence. Therefore require the area variance. Jeffrey Fedor states then we really need to look at the structure, like it has plumbing or 200-amp electrical service in it? Attorney Pozefsky states it's almost a case by case basis. You may have some kind of structure like a 10 x 10 shed that is brought to the site and has no power no water nothing there, you might say, okay you really couldn't live there. You could also have a garage that is right next to a well, you might say it use to have a bathroom in there but took it out, but could also put it back in there. You have to look at it case by case and ask is it possible that it could be converted to a residence or dwelling? If it is possible like certainly a mobile home I would think you would have to err that someone could possibly live in it down the road. That's a bridge you can cross when you come to it

but I wanted to talk to you about it because I have talked to the County Planning Board about this and Attorney Cathi Radner on how to look at these structures.

Chairman Clarke states that now Fred, as Zoning Administrator would be responsible for any decision the board made concerning that in the future. Attorney Pozefsky states yes he would, he is the initial person making that decision and I'm sure he will take the lead from the board, if the board interprets that an accessory structure to be one that you really can't live in realistically, then he can take that and run with it on a case by case basis. Chairman Clarke states that in this case I know the town is in litigation with Mr. Eggleston and apparently he is attempting to clean up the junk yard there? Fred Mann states that there is one trailer dismantled there but there is still one there. I have not gone in there because there is a (90) ninety-day limit. The one trailer from the road I can see that they have torn it apart because I just see the frame. Unless you direct me different, any time anybody comes in, where there is a trailer involved, you will be seeing them in front of the Zoning Board, because the decision is not made in my office by myself or Linda. Now Jeff built a barn and there's one toilet in it, but I would still consider that an accessory structure. I wouldn't consider it a home. It just makes it a lot easier when riding horses to go in and use that bathroom rather than to go into the house. Chairman Clarke states that I know some people put bathrooms in garages, like you said Marty. Yes, that's why I say you need to treat as a case by case. As Fred says trailers have that built in so you have to look at that hard.

Fred states that since he has been here, it's been in front of the Town Board there has been a couple that do use them for storage. The toilets and kitchens had to be removed it was left as a shell. Sigrid asks, the survey that is included with the application, is there a time limit on how old a survey map can be? On this one particular map it shows Route 9N as, 9K. How long legitimately can one use a survey map. Attorney Pozefsky states that you can, in the Codebook it says you can waive any survey requirements or anything else that might otherwise be necessary. So you can use an old survey map or you might say it's outdated and we need something more current. We know this is not reflective of what is out there. If the board would accept it it could be as easy as getting a copy of the assessors map of the property, of course an updated survey to scale would be the best. A question to Attorney Pozefsky in regard to the (90) ninety day period for Mr. Eggleston from our last meeting, when does this end? How many days are we into this? Attorney Pozefsky states that one of the things we talked about last month was that section 13.2 if your in violation of the code, your not suppose to grant a variance. I had talked with Attorney Radner in regard to this and I believe she was working on both cases. She states that she had said to be careful not to deny somebody a variance because they are not in compliance with the code, because you want them in compliance with the code. So you could say, for example we will grant an approval upon conditioned you bring it into compliance. That's something to think about certainly in Mark Eggleston's case. Mr. Eggleston is under a court decree that says you have got to clean it up in (90) ninety days. Sigrid asks if that is the entire junkyard? Fred states that is what he brought him to court for was the entire junkyard. His attorney said we'll get started with removing the

trailers and go from there. The way I got it was I believe we will be going back to court. Sigrid states but the junkyard is still there. Fred states he understands and he can only see from the road. Sigrid states what about the cars? There has been a constant change of the cars.

Fred states that is all part of what needs to be cleaned up. He can have one plow and one unregistered vehicle. Well Sigrid states he has about (10) now, different from the ones he had there last month. Sigrid asks how we keep track of that? Fred states he has pictures of the vehicles at the beginning and will take pictures again before he goes back to court. When the time comes we will compare. Mr. Fedor states we are on two different points, he's not here and we can't do anything with the variance and secondly at that point we start looking at weather or not he has met with the intent of the judge of the judge's order. Were not in a position right now to do anything. Chairman Clarke asks Attorney Pozefsky if we can schedule a public hearing? Attorney Pozefsky states no, not really. I think the way to handle it is to send him a letter stating we are not taking any further action until he appears before the board. After that I think you have done all you can to nurse it along. Chairman Clarke asks about the (60) day clock. Attorney Pozefsky states what he was talking about was after you have the public hearing and you close it, it starts the (60) day period for this board to make a decision. If this board doesn't make a decision in those (60) days it's deemed approved. You don't want the clock to start on this board, when he may never show up. Chairman Clarke states, then he hasn't followed through the application process because he hasn't yet to appear. Secretary states she can send his letter both regular mail and certified. Chairman states to go ahead.

Sigrid has one other question. Are we to assume that the information on the applications are always true or should there be some statement to that affect on the application, and that they are notarized saying that this information is true? Attorney Pozefsky states there are two answers to that if I may Mr. Chairman. The first is, it certainly wouldn't hurt to put on the application that they certify the truthful and accuracy of what they are saying. Secondly, the board has the independent right to investigate. Which I think you do on occasion, you go out and take a look at the scene to verify the information given on the application. I believe together those two things should work. You actually have several powers, some of them administrative some of them quasi - judicial meaning you do have the power to swear witnesses in if they are giving testimony or evidence. I believe you have the power to compel the production of documents if necessary. You have the power to confront these people and do more than be a benign board. Chairman Clarke states he believes that this is something to look into for the applications. Sigrid states she had noticed that people are crossing things out and rewriting things and it leaves questions. Secretary states, she may have been the one to do that on an application. Perhaps I should have initialed it. Maybe being that the use variance isn't seen that frequently we should make the first page of the application for the area variance. Secretary states she can switch them around.

Chairman Clarke states to Attorney Pozefsky that while we are on the subject, this pertains to Mark Eggleston I appreciate you following up with the County

on the referral. It looks like it's a good idea and I like that we circulate copies of your letter to the board members to consider of the possibility entering and signing with the county the memorandum of understanding. Attorney Pozefsky states if I could just remind the board again what happened last month. It actually had to do with Mr. Eggleston, because it is on a state road. You had raised the question Mr. Chairman if this should be referred to the County or not because it is within (500 ft.) of a State Road. The answer to that is generally yes. It is required by law, but how ever my recollection of this was that this board had signed a waiver which said if it was a single family residence situation and the board doesn't feel it had a county wide impact, the agreement said you didn't have to send it down. That's because the County doesn't want to get involved in every small area variance. The Zoning Board does not have that agreement in effect with the county. The Planning Board does, and the Town Board does. I think just because it's a new board we just haven't addressed it yet. That's when I contacted Mike Valentine and he sent up the agreement that I forwarded to Mr. Chairman. Since then I have talked even more to him about this and it turns out that there are two different agreements that this board can enter into. One has to do with not having to send every small area variance down there. It can stay here and only if this board in it's discretion feels there may be some county wide impact that you would then have to send it down. That is the agreement I believed you had. That's the one the other towns have that I work with. They have a more broad agreement called a memorandum of understanding, which requires you to send everything down, and then they decide if there is a countywide impact. So when I talked to the county and said if I were a locality, I would rather keep it here and let us decide if it is significant or not, verses letting the county decide if its significant or not. My feeling is I would rather see this board sign the waiver agreement, which is not the one you have. The waiver agreement says everything stays here, only if you decide it is important enough to be sent to the county will it go down. This is relating to area variances. Chairman Clarke asks if the Planning Board adopted a waiver. Attorney Pozefsky stated they signed a memorandum of understanding because the waiver only applies to area variances. Attorney Pozefsky stated he would bring a copy of both agreements and then they could read them and he would discuss and answer question about them then.

Chairman Clark asks if there is new business tonight and Linda stated Mr. & Mrs. Allen are here requesting a variance to keep the mobile home on their property so their son and daughter in-law can remain living there. In their packet you will find a copy of the previous variance dated in 2002. Chairman Clarke states he believes they are looking to be scheduled for a public hearing. Mr. & Mrs. Allen will be on the agenda for a public hearing and a legal ad will be placed in the local paper. Chairman Clarke asks to Mr. Allen if there is anything he would like to add to the application. Mr. Allen states the reason for the request for the variance is because his son's wife and their grandchild are ill and bipolar and need help and guidance in taking care of him. The mobile was put there for my mother and sister but I would really like to be able to keep it there. My mother moved to Angel Road and my sister moved up in that area. Chairman Clarke stated that we will have you put on the

calendar for next month for a public hearing. Sigrid asks about the list in the Allen packed of addresses in Woodcrest Acres. Linda states the address was highlighted to show where Mr. Allen's mom had moved. Sigrid states my understanding from reading this is that the mobile home was to be removed? Mr. Allen states yes, it was to be removed when my mother moved out but it is still there. It was upgraded while she was still living there. My mother and sister moved over to Angel Road first. Then we were put into a predicament with family court with my daughter in-law's parents trying to take the children away from my son and his wife. That's when we moved them into the trailer. Now we want to have the old variance turned over so my son and daughter in-law can live there. Mr. Fedor asks basically this would have been an elder cottage variance? Fred Mann states, that is what was done with the Town Board. It doesn't say that here but that is what it basically was. Fred Mann states, before zoning the Town Board just called them variances. Chairman Clarke states then it was pre-existing then. Linda states yes, this was dated April of 2002. Sigrid asks Attorney Pozefsky where do we stand on that now? There is no elder cottage. Attorney Pozefsky states that the ones that were approved are approved, as I understand it as long as they don't deviate from their agreement or conditions that were imposed. No new ones can go in. So if they were put in when the law was in affect and they stayed the way they were suppose to, for example don't expand them change them some how that would take them out of their pre-existing non conforming phase. Sigrid asks now what happened to the one we had who was it. Mr. Carey Mann. His was to be removed within a year. Fred states he just came in and said he bought the land next to him (27) acres. He was going to be subdividing it so he could put that on there. Jeff Fedor asked if that was on Fuller Road. Fred stated yes. Jeff Fedor states that someone is living in the mobile. Fred states that he doesn't know of anyone living there. I will check that out. Jeff Fedor asks Attorney Pozefsky that all the elder cottages the Town Board Variances were grandfathered in? Attorney Pozefsky states yes. Mr. Fedor states as we see this happening we will see them expiring because of the conditions not being met. Are we obligated to continue to grandfather them again? Attorney Pozefsky states this was before the Zoning Law went into effect. So there were no elder cottages when these were done. What we have basically is (3) three points in time. We have before the Zoning Law went into affect, that's when the Town Board granted the variances and they usually put conditions or stipulations on them. If the conditions or stipulations are not met, they loose that variance. Which I think is what is happening here. At least that is the allegation. But if the conditions are being met, they are pre existing non-conforming structures that can go on forever in some circumstances.

Then we have after the Zoning Code, that went into affect at that time period and there were elder cottages and there were several of those got approved with whatever conditions got put on them. As long as their conditions are met, they are good. Now we have no elder cottages, so those can't be approved as an elder cottage. Jeff states then, they come with this mobile application as an elder cottage. Attorney Pozefsky states it not a use that is permitted there any longer. Fred is that correct, is that an R-2 zone? You can have a mobile home but you can't have two homes on one piece of property. I guess this question now is, is this an area or a use variance.

The use is permitted, but only one per lot. So here we go again, we have a second dwelling on one piece of property. I think before we decided that it was an area variance because it's a permitted use. You just can't have but only one on a lot. Like the Gregory area variance we had last month. Chairman Clarke states that when the Town Board granted these variances they were careful with the rules and stipulations. Jeff Fedor asks Fred if he knows if there are a lot of homes in that area, a mobile home park? Fred states no; it's not a mobile home park. Jeff states it's just a heavily mobile area. Mr. Fedor asks do we have a lot of instances of this on this road? Two homes on one lot? Fred states, no, there was a lot subdivision up the road. Chairman Clarke states to Mr. & Mrs. Allen to get with Linda and we will put you on the calendar for July for a public hearing. Chairman Clark states to Mr. & Mrs. Allen that the board would like a plot plan with the paper work for next month. Mr. Allen stated he would have a copy to Linda before the next meeting.

Chairman Clarke asks if there is any other new business? Secretary states not this evening. Chairman Clarke asks if there is any input from the public? Mr. Fred Koch would like to ask the Code Enforcement Officer a few questions. Mr. Mann if you have (6) six abandoned vehicles there is (6) violations. Do you write up the summons (6) six times, one for each violation? No, states Fred Mann just one. Mr. Koch asks do you list all (6) six violations are on one summons? I listed the one on the trailer and on the junk vehicles. Mr. Koch states you put down each vehicle on the summons? No, stated Mr. Mann. Mr. Koch asks how do you identify the information. Like you can see it's a 1968? Mr. Mann stated no. We don't list like that. Mr. Koch states that it's a very gray area just saying vehicles. Mr. Mann states that this is how they are wrote up and followed by the codebook. Mr. Koch states I believe that Mr. Pozefsky would agree that to flag a vehicle that is in violation, it should be identified. To a certain type of vehicle a VIN number and old plate or perhaps an old 1968 sticker or something so they can be identified. If you are only charging once with 6 or 7 vehicles they should be able to be identified. Mr. Mann states I am not going onto people's property where I am not welcome and start writing down VIN numbers. Chairman Clarke states he believes that the board has the power, if Mr. Eggleston pursues this application we could ask him if he presented to the board permission to come on the property for a visual inspection of the property. Linda states to Chairman Clarke that with everything that's happened, I don't believe you will get his permission. Mr. Koch states I understand what you are saying, the building inspector can not enter the premise but if he could see it, just like a policeman, if I see a violation I can go there. If the building inspector calls for a policeman, he can go on the property to look at the violations. Mr. Koch states if you can't see them from the road, come to my house. Mrs. Springer stated her house as well.

If there is a court action being done, I am just saying I want to see what is being done. He's got a few more weeks to get things done. He'll take something out and bring something else in. Fred Man and Linda both state, yes we know how that works. Fred went to one place with a police officer, and when your man leaves you there, your suppose to continue? Mr. Koch says that won't happen. It's happened

states Fred and Linda. Fred stated he had a search warrant and an office with him and I turned around and he was gone. Mr. Fedor states that this case is in front of the courts and as far as we are concerned we don't have to deal with this until his outstanding violation is dealt with, and he has to prove that in a court of law, right? Fred Mann states yes, the courts will give us paper work stating the results. Mr. Fedor states then, as far as this board goes this application is tabled. Fred Mann states when the court is done and they are satisfied I will get a statement from them in writing. This is what you are looking for. Again, I am not looking for this to happen all that quickly. Sigrid Koch states, he is constantly changing vehicles. I can tell the difference between a truck and a thing with a boom. Philip Giordano states it makes no difference, it's still unregistered. Fred Koch states I'm not picking on you Fred, but if you have several vehicles then describe them. Each of them. If your going into court and your saying he's got 3 unregistered vehicles describe them. If I was the defense counselor I would ask, which one of my client's vehicles are unregistered?

Attorney Pozefsky states, just so I can answer this I know Cathi Radner has been working with Fred on this, I would have to talk with her before I said anything. Mr. Koch states he's not picking on Fred. Again Fred states I put that court order up like you wanted and I have pictures. That should cover most anything that is there. Chairman Clarke states, that if this board were to consider it and if he was to be under compliance we could ask Fred for verification that all the vehicles have been removed, or some assessment of the vehicle that have not been removed. Mr. Fedor states that in that case unless they allow him to go and look at it, we don't have to hear the case. Mr. Fedor asks Mr. Chairman are you looking to, look over our applications during this next month to bring some ideas as far as delineating area use and then an official statement certifying true to the best of my knowledge? Chairman states yes. Sigrid asks do we have notary's here in the building. Linda states yes, we have (3) in the building at the time. Chairman Clarke asks if there is any other new or old business?

A motion to adjourn the meeting was made by Chairman Clarke and seconded by Sigrid Koch. A roll call vote was taken.

X Sigrid Koch X Chairman Clarke X Jeffrey Fedor X Philip Giordano

4 AYES 0 NAYS

This meeting closed at 8:12 P.M. Your next meeting will be held on July 5, 2007

Respectfully,

Chairman William Clarke