

**FRED C. MANN JR.
TOWN OF CORINTH
ZONING BOARD OF APPEALS
600 PALMER AVENUE
CORINTH, NEW YORK 12822
518 654-7793 EXT #5
FRED C. MANN JR.
ADMINISTRATOR**

February 7, 2008

A meeting of the Corinth Zoning Board of Appeals was held on Thursday February 7, 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 Tearnio Y Philip Giordano Y Attorney Pozefsky Y Fred C. Mann Jr. Y Linda Hamm, Secretary.

Public: Eric Butler, Fred Koch, Arlene Springer, and Shelli Everts

A motion to approve the January minutes as written was made by Sigrid Koch and seconded by Glen Tearnio. A roll call vote was taken.

Y Philip Giordano Y Glen Tearnio Y William Clarke Y Jeffrey Fedor Y Sigird Koch

5 AYES

0 NAYS

Old Business: Mrs. Shelli Everts returns with her public hearing still open. Included is a timeline sheet and pictures that the board requested last month and copy of a property sale questionnaire and map that Mr. Fedor got from the Assessor's Office.

Mr. Fedor asks Mrs. Everts that the view from the Everts land in this first picture is of the neighbor's house? Mrs. Everts states that it is the view you see from my yard, Mrs. Everts points to the board the fence she had to put up to keep Ms. Sweets dog in her property. The next picture I stood in the same spot and just turned around and took a picture of the cabin, I then moved toward the cabin to get a closer shot. Mr. Fedor states he asked at the last meeting the status of the other buildings on the land as far as tax purposes go. I went into the Assessor's Office and I found that there was a Property Sale Questionnaire here, which I believe that was filled out by Oren Everts. It is in his name but it was filled out by me, stated

Mrs. Everts. Obviously referring to the date of sale, which shows November 7, 2003, it, was received back by the town as you can see, February 2, 2004. You see the receipt stamp is there. Yes! I see here, by the way it is stapled the second page it says the total number of residential structures on this property is one. It doesn't refer to the cabin. Mrs. Everts states that because that is how the deed reads and that is how my taxes were listed. So that is how I filled that out. I took the information off of those. So from this date until 2007, I'm just trying to reconstruct the cabin was not declared with the town as far as taxes are concerned? No, that's not right, back at the first meeting, Linda went into the Assessor's Office and got the picture of the cabin from them. This was after I was reassessed on 2-15-04. Linda stated that she does not know when the picture was taken. Shelli states she knows the picture was taken after we moved in because the little over hang at the door way my father in-law put that up to protect the propane tank so the snow didn't block it.

Mr. Fedor states that when I looked at the tax assessor card and Ms. Hamm was there, what I saw was that the structure was not added to the tax assessor card according to the assessor until 2007. So this structure was not listed as either a residence or even as an out building. Then I am looking at this occupancy and it's not even listed on your inventory list. Mrs. Everts states that I don't know what to tell you. It asks about the primary residence, it doesn't ask about sheds, outbuildings, barns and so forth. Mr. Fedor states, I think were trying to ascertain if this building was grandfathered in or whether it was being used during this specific time frame. One of the key dates is June 15, 2004. If it was being used as a residential structure a year round residential structure. Mrs. Everts says I can pull mail with dates on it that is addressed to my father in-law. If that is what you would like to see. Mrs. Everts states it is because she has to keep his bank records for a time. If you look at the previous tax assessment when we purchased the house my assessment was on the 2004 assessment the taxes were based on a \$ 142,000 assessment. Mr. Fedor states he would just like to bring it to the boards attention that on the assessment card the structure was not added on according to the assessor until 2007. It should have been on there in 2004 that's when they went around to reassess states Mrs. Everts. At some point she had to come on the property and took the picture. No one called me and asked permission.

Chairman Clarke says to Attorney Pozefsky that from your letter in regard to "Grandfathered" Uses and Structures dated January 24, 2007 is this the initial letter from the first meeting? Attorney Pozefsky states the January 29th letter? Chairman Clarke states it's the most recent letter. You are stating as to whether the cabin is a principal or accessory use/structure. Yes. Chairman Clarke states and whether or not that accessory use was lawful when zoning went into effect. Yes. states Attorney Pozefsky. Attorney Pozefsky states that just so the board knows, Mrs. Everts and her attorney who I had talked to a couple of times this week, and I have been working with her attorney to try to walk through this. I know Mrs. Everts had found a section and talked with your attorney 89.12 which

says you can have two principal dwellings on one lot, provided it can meet the minimum required lot area, lot width and all yard requirements. That is the section that Shelli had found. It is 4.4 in your land use book, in case you want to look at it. I think the question here that the board has to decide is whether we have two principal dwellings. What I would direct your attention to is your Appendix A, your definitions. In it under accessory structure, it talks about guest cottages, as being an example of an accessory structure. I think based on what Shelli has given the board in terms of the use that has been made of this cabin over the years, especially on June 15, 2004 there is a provision of what it was being used for. Again it seems to fall into more of a guest cabin than it does, a primary principal dwelling.

Mrs. Everts asks Attorney Pozefsky if she could ask something? I didn't see accessory structure in the book I have, all I found was accessory use. Attorney states if you look at Appendix A, right under accessory use is accessory structure, the third line down it says including a guest cottage not for rent or hire. Attorney Pozefsky states I believe based on what you are saying here is that on June 15, 2004 your father in-law and companion were staying there. Yes, stated Mrs. Everts. They paid to live there stated Mrs. Everts. For their heat, air conditioning and food.

Attorney Pozefsky states a guest cottage seems to fall under the accessory structure definition. Mr. Fedor states he would like to mention to the board that I made a call to Kelleher Realty whom represented the seller. I asked them how was this lot, parcel and buildings on this piece of property advertised? They went back and looked at their notes and they said year round guest cottage. Which I think falls into exactly what Marty is saying here. It was listed advertised as, she is even showing us here a guest cottage. Attorney Pozefsky states unfortunately the code doesn't define guest cottage. Mrs. Everts states she went to Webster's dictionary and looked up the definition of guest. The noun version of guest is,

1. A person entertained in ones house
2. A person whom hospitality is extended
3. A person who pays for the services of an establishment

So again, with the definitions of the dictionary, I was trying to bring the facts to you, I have everything here. Mr. Pozefsky told Ann I needed to have ready for the variance, I have everything ready for the use, anybody have any question and want to ask me, I have it here. At this point I don't even know what I am in trouble for. It has gone from a certificate of occupancy to, two residences to a guest thing to someone living there on a yearly basis rather than on a daily basis and whether it is springtime, track season or what ever. I don't know what to do. From where I stand when we bought the house these laws were not in effect. I'm sorry if I didn't do more research than I had my attorney do who had talked with Mr. Mann. This particular thing was all ready there legitimately. I didn't know they were going to pass a law a year and a half later and say you can't do this now. I didn't know it was going to take someone three years to complain that someone was living there

when you see my timeline. People have lived there. Chairman Clarke knows this; he met people that were there, in a social environment in the summer of 2006.

Mr. Tearno asked Attorney Pozefsky to tell them a little bit about the first few cases you cited and some background on one other. Because based on that if I understand your letter correctly, the courts determine if the principal use was lawful the accessory use is lawful and therefore grandfathered. Attorney Pozefsky states absolutely and certainly it's lawful here under the new zoning here because it's a single-family zone. So there is no question even under the new zoning, you can use that for residential purposes. I guess what the question here is, was anything grandfathered and if so, what was grandfathered. That's when you get into, what was the use being made on June 15, 2004? The history leading up to that, is the cabin a principal residence or an accessory residence? One of the other points that Mrs. Everts had on here also was, the cabin has its own source of heat and sewer but the power, water and cable come from the main house. So I think looking at that, are they two stand alone independent principal structures? So for me when I looked at the definition of accessory structure, it said including a guest cottage or guest cabin, "including" means it is not limited to that, but there is an example of an accessory structure. To me it says, if I were on the board I would probably say, it appears to be accessory on that date, to the main house for a number of reasons, the use was residential, even though seasonal maybe sporadic, the courts have said, that's not so important, your code doesn't limit things to seasonal versus full time use. So if it has a residential use, it has a residential use, but it has to be accessory subordinate to that principal use, as a guest cottage would be. Kind of more intermittent than full time permanent. So I think the board has to interpret the code here, including is this a guest cottage or not, under the circumstances, if so is it accessory. If so the use that is grandfathered, is it more of seasonal versus a full time use? Once you get to that analysis and you make that decision about what is grandfathered and not, the cases have said an accessory structure can be terminated if it doesn't cost substantial financial harm to the applicant. I don't know that the board needs to go that far or not, if there were some use that were not permitted today, say a commercial use that Zoning was trying to do away with, the board might have the authority under those circumstances to say we are going to terminate that commercial accessory use, because your not going to have a substantial financial harm if you lose it. But here because it is a residential use and that is permitted anyway, the board may very well say, it's a grandfathered cottage use intermittent, not permanent but were not going to terminate it because it is lawful today under the new zoning.

Mr. Tearno asks this cabin is tied to the main residence by utilities? Mrs. Evert's states, by power, water and cable. It does have its own Verizon phone line, its own heat and septic. The only annoying thing about the cabin is, if I were not allowed to use it and have to shut it down in the winter months we would have to dig up a patch next to the garage, because that is the only access for a shut off. There was not a line with a shut off put down at the cabin. That's one of the reasons I tried to keep it open with somebody there even if it's not a lot. If I use it just for

guests in the winter it is our expense for the heat, is someone is staying there, they pay for their own heat. I did do a comparison if you would like to see what the financial implications would be as compared to what it cost when we purchased the place and the cost for today. Mr. Tearno asks what is the source of heat in there? Mrs. Everts states it is propane heat and hot water. There is a built in air conditioner. Chairman Clarke asks Fred if the board determines that this an accessory structure, how would you be able to enforce the law as far as being a principal residence? Fred asks say if something like this come up again? Fred states you can't have two habitable buildings on one property with out getting a variance from the Zoning Board. This was brought to my attention and why Shelli is here. Chairman Clarke states he is just wondering about enforcement because this was brought because of a neighbor complaining about this apparently? I am just wondering how you will handle with other cottages. Mr. Mann states he would have to do the same thing and the owner would have to come before the Zoning Board. Chairman Clarke states for his part, having neighbors rat out other neighbors; I really don't like that idea. To me from an enforcement level, I would like to see some other way. Fred states, that is how you learn of most things.

Mr. Fedor states to Mrs. Everts at the earlier meeting, you stated your primary purpose is not to use this as a rental. Mrs. Everts states we do not advertise this, if you check the timeline I gave you. People who have lived there are people mostly referred by other friends or family members. The person living in the cabin now I didn't know personally, he came to us from a person I use to work for. He works for Binachio as a contractor. Mr. Fedor asks about father and companion just paid bills or above and beyond? Shelli states he actually paid a set amount because we also paid for his groceries and medications. How about from 2004-2005 and the next set there, did they pay a set amount? Carey paid a set amount, only because she was back and forth from her parent's house. So we came to a pre-determined amount because of having to have the heat on other wise if turned off it would freeze up. Mr. Tearno asked if it was a rental fee or for utilities? To cover the cost of the utilities? Shelli states to cover the cost of utilities, I set an amount and then showed them the bills to see what their share was. One family had roadrunner and it sent the cable bill up, so they had to pay for the difference. My propane and electric bills there are a separate reading for the cabin. Mr. Fedor asks if she was getting just enough to pay their bills? Yes, pretty much. If there is no one there and using the heat the cabin will get ruined. Then you just might as well tell me to tear it down, because I would rather see that than to have it fall apart. This way someone has a place to live for the cost of his or her own utilities.

Mr. Tearno states that according to Attorney Pozefsky, it is to be determined as to what is was being used for on that date. I feel we have gathered as much information as we can. Chairman Clarke states in his mind it is clearly an accessory structure. Mr. Tearno states he doesn't think you could call it anything else. Attorney Pozefsky states you should probably do all this by motion just so that there is a record of your decision. Mr. Giordano asks Attorney Pozefsky if they

should make a motion on all (5) points? No states Marty I don't think you have to go that far. I think you can consolidate this into one motion. I believe that if you were to decide that it is an accessory structure it could be used as example for intermittent residential purposes and that should be as far as you would have to go. You don't have to define guest cottage tonight. It might be good as a recommendation from this board to the Town Board to define it. Chairman Clark states that was his reason for asking Fred how he would be able to enforce it with out neighbors ratting on neighbors. I'm uncomfortable with that, and being that this had been being used as a full time residential building I think there should be some kind of recording. As far as what is the current use, Fred is not going to go there and check this because it is private property unless someone complains. Being the history that has been laid out here of the use it seems that it has been used as residential. Mr. Fedor asks can we put restrictions, I know we could terminate if there was justification. But the restrictions could be more to delineate the two individual purposes. Mr. Fedor states his concern is that he doesn't want this to become a rental property in excess, meaning above and beyond the utilities. That's what it was then and that is what it should remain. Chairman Clarke states the father in law was living there as an in law apartment thing, I can accept that but as a rental property for me I think that violates the separation. Attorney states he feels you can achieve that with out restrictions per say, I think what you can say is here is what is grandfathered. We think this cabin is grandfathered for non-rental, intermittent guest usage with utilities. You can define what you think the grandfathered structure is for this cottage. In effect you are limiting it because she really can't go too far outside of that being a variance situation. I also think you might want to consider sending a letter to the Town Board saying, we ran into this situation with the guest cottage we really don't have a definition of what that is, while we have the power to interpret this, maybe the Town would like to take a look at this and address it. It's interesting that the word guest cottage appears in the code under accessory structure but it's not defined anywhere. You do have the power to interpret this but again you want to interpret it just for this situation and leave it to another day or give it a much more broad approach. I think you should make the motion, is it accessory or principal and if it is accessory what's grandfathered? Sigrid states it certainly needs something with more teeth in it for us to work with. Attorney Pozefsky stated that he believes that when the Town Board wrote this wanted to keep it somewhat flexible, so that you could look at your situations and have some flexibility. Mr. Fedor states to Attorney Pozefsky that the way he understands it is whichever way they interpret this the applicant if they wanted to appeal they would have to the court of law, it can't go to the town. Correct, the only recourse the applicant has is to bring an Article-78 proceeding in court. You can't go to the town board and say you don't like the decision the zoning board handed down. They have no power to review it; they can change the law, for the next situation but they can't hear an appeal of this.

Mr. Tearno, states to Attorney Pozefsky he would like to talk a little bit about the letter he forwarded to them in regard to the court cases. You talk about some case law with expansion and intensifying of grandfathered use. It mentions

there is no restriction in the land use law, so how does that effect our ability to restrict or limited use? Attorney Pozefsky states, a great question because your code is silent on intensification. Other codes actually say, you can't enlarge it you and you can't intensify it. So there it is covered and pretty much restricts it by its own language. This code does not say that. It doesn't have to say it. What the cases say is where the code is silent on that point, the intensification is okay as long as it doesn't change the over all character of the use. Mr. Tearno says for example, the guest cottage is to be now advertised? That would be to intensify? That would be an intensification of use, but not prohibited? Correct states Attorney Pozefsky. So basically the case says you haven't limited it, so that's okay. Correct. That's why ultimately when you decide if you decide, what is grandfathered maybe you want to delineate this to the extent you feel covers what you think is grandfathered. What was being made of it there for should continue to be made of it. Let's say you decided to sell your house and the new owners decided to advertise it, they decided to go over board on it. Fred could bring them right back here, another neighbor would complain perhaps. Then the board would have to look at it and see if the code had changed? Is there a prohibition now against intensification, if not have they crossed the line? Which with the cases, even if it becomes obnoxious it's okay. It kind of applied here except the neighbor was a little much.

Sigrid states in regard to the list of objections we received from Ms. Sweet, one of them she has here was trying to have a level (3) sex offender who pled down to level (2) there applied. Mrs. Evert's states that Andy Kelley and I have what I consider a fairly good relationship and I went to the New York State Sex Offenders site. With this guy here and the previous guy a Wilton professional because I did not personally know him, I typed in their last name. One of the requirements for people I personally don't know is I get their social security card, a work reference and a copy of their drivers license. I have also told Joe, you can not make this a permanent address unless you want to provide me proof of insurance on your vehicle because my insurance company will require it. He does not get mail there. But for a level (3) sex offender that is my point for not advertising, because if I advertise it in the paper and a level (3) sex offender came and said I want to rent it and I had no viable reason for me to tell him no. If I did, I would be in trouble for discrimination. Mr. Fedor says he thinks it needs to be stated that, whether or not a level (3) sex offender or level (2) sex offender has a right to live somewhere. I don't know if it is our board's position to decide this. Attorney Pozefsky states you have to be really careful about that, because that is governed by New York State Law and even local law. I don't think you as a board has the power to say who can live there and who can't. Sigrid states that her question is specifically because a friend has referred everyone and her statement is so completely opposite. Mr. Fedor states to Marty that in the accessory structure definition in the Appendix it says at the third line down " associated with such principal land use or development, including a guest cottage not for rent or hire. Including, does that also mean it could include a cottage for rent or hire?

Attorney Pozefsky states that it is the way he would probably interpret it.

This is an example, that the Town Board has chosen to put in there, but the word including means there could be other examples as well. I don't think it is intended, but the board has to interpret the code. I don't believe it is intended to limit it to just that one instance. I think it can include guest rentals for hire or for rent. Ultimately this board would have to make that decision of what this was intended to mean. I take the word to mean including but not necessarily limited to that. Mr. Fedore states that in an earlier letter from you there were two points and one is the date May15 and the other point was whether it was abandoned or not? Yes, if it was used one day during that year it was enough.

Mr. Fedor states he would like to say that on those two points, I am sufficiently satisfied that it was not personally abandoned during that time. That would be part of the criteria I am concerned with. The only criteria that I would ask that we look at, is the usage of that structure on the date of May 15, 2004. Until we look at that as much as we can. Chairman Clarke states he believes at that time I believe it was like an in law apartment situation. Mrs. Everts states that technically it was my husband's father and my husband owns the property, so it was a family type situation. Mr. Fedor states we say in law apartment then we are also dealing with or is it a rental. Mr. Tearno states he would say that it was being used as a guest cottage at that time. Mr. Fedor states is that for rent. Mr. Tearno states no, for rent would mean advertising, posting a notice, a sign. If you do any of those things, then it's called for rent. If somebody comes to the owner and asks can I stay there? Yes, you can is much different than being held for rent and anyone from public can go there. I think that is what you are trying to curtail. I think that is what you want to look at, not being held for rent. So then it enables her to collect the monies to pay the bills, the cable etc. but it does exclude her from making it a rentable unit, setting it up for a business. Attorney Pozefsky said as Linda had a really good point, it's not for profit. So if you were to collect monies to cover expenses presumably that's not for profit. Chairman Clarke states that is a slippery spot. Attorney Pozefsky says you think so? Yes states Chairman Clarke. Mr. Giordano states his feeling is that it should not be a permanent residence where someone can come and stay two years. What's to say someone moves in there with two kids through the school year that requires an address. Mr. Tearno says anyone that lives there for a period of time will have the address. Either way it is still residential use.

After more lengthy discussion on this matter a motion was made by Mr. Glen Tearno made a motion that on the 15th day of May 2004 the use was lawful and is continued as lawful and is grandfathered for a use as a accessory structure specifically a guest cottage not to be offered or hire for rent. A second was made by Philip Giordano. A roll call vote was taken.

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

2 AYES

3 NAYS

This motion was not passed.

Attorney Pozefsky addresses Chairman Clarke, the only question on that was because whether this is a guest cottage is a separate structure verses one that's not separate. I don't know if it makes any difference on this. Chairman Clarke states, in terms of this being an in law apartment kind of thing? Yes, verses a separate structure.

Mr. Jeffrey Fedor made a motion that on the 15th day of May 2004 the use was lawful and is continued as lawful and is grandfathered for a use 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. Sigrid Koch seconded. A roll call vote was taken.

N Philip Giordano **N** Glen Tearnio **Y** William Clarke **Y** Jeffrey Fedor **Y**
Sigrid Koch

3 AYES

2 NAYS

This motion was passed.

Included in these minutes area copy of Ms. Vicki Sweets List of Objections from last month:

Jicky Sweet

List of Objections:

1. When I viewed the 45 Atwell Property with Wayne B. (before listing with a realtor), he plainly stated the cabin was a guest cabin or playhouse for my daughter, could not be rented. He only rented the house and used the cabin as an office.
2. The realtor listing listed the property as a single residence ranch with barn and guest cabin.
3. My 2 lots border the cabin and I started building my house in the location I chose because I had been told the cabin was a 'guest cabin'.
4. The cabin is closer to my house than it is the 45 Atwell Ranch house and I have zero privacy when it is rented/occupied.
5. I purchased and built my house because I wanted to live in the 'country' not the village where I would have neighbors right next to me and I wanted privacy without neighbors directly bordering my house on any sides. I don't have any curtains on any of my windows and I love it!
6. My house has been appraised a few times, with closings, and each time the appraiser has directly asked what the cabin "IS" as it directly impacts the value of my vacant lot and my house.
7. If the cabin is rented full time, my house value and my vacant lot will be directly impacted and **de-valued**. Anyone who buys my vacant lot would be building behind the cabin as that is the highest and most level point on the property. They too will be asking about the cabin and what it is and will impact interest in purchasing—will be harder to sell.
8. I have 2 horses with fencing bordering the property line and should not have to worry about anyone having access to them—many things could happen. The shelter that is there for the horses now is temporary and will be taken down this summer after my new barn is built.
9. I have plans to put a large deck on the back of my house and maybe a pool eventually and again—no privacy for either.
10. A huge reason I object: We have no say on the type of person who moves into/lives in the cabin. Since moving into my house, the one room cabin has been rented to 3 adults with 3 dogs; a man in his 50's who was a drunk, pot smoker, and ran up close to \$100 in porn on their cable bill; whoever is in there now plays their music loud; and then worst of all—Shelley was trying to have a level 3 Sex Offender who plead down to level 2 (verified by State Police) move in there and I had a 12 year old daughter, Andy had a 13 year old daughter and the Torda's had 2 daughters: 2 year old and 9 year old at the time. This possibility really upset me terribly and basically ruined our friendship that I had valued and trusted.
11. Out of everyone contacted here and bordering 45 Atwell, as well including Shelley and Oren Everts, the person(s) **most affected** by this cabin and it allowed to be rented full time is Myself, my daughter, and my vacant lot selling price.

Again Attorney Pozefsky suggest to the board members to write a letter to the Supervisor and Board Members in regard to definitions that were discussed here tonight. Chairman Clarke states he will discuss with the Supervisor.

Chairman Clarke states to Mrs. Everts to see Linda and you will have to file a use variance and a new legal ad will have to go into the paper. This will be held in March's Zoning Board meeting.

Chairman Clark asks if there is any input from the public? No comments were given.

Glen Tearno made a motion to adjourn the meeting and Philip Giordano seconded. A roll call vote was taken.

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

5 AYES 0NAYS

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

Next meeting will be held on March 6, 2008

Respectfully submitted:

Linda Hamm - Secretary

William Clarke - Chairman