

**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

MAY 1, 2008

A meeting of the Corinth Zoning board of Appeals was held on Thursday May 1, 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 Fred Mann and Y Linda Hamm, Secretary

Public: Christopher Smith, Cathy Smith, Vicki Sweet, and John (Jack) White

A motion to approve the March minutes was made by Glen Tearno and seconded by Philip Giordano. A roll call vote was taken. April minutes were approved, as there was no meeting.

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

5 AYES

0NAYS

Old Business: Attorney Ann Casey was to be here for Mrs. Shelli Everts on her continuing variance but Mrs. Everts came to the Zoning Office and withdrew her application.

New Business: Mr. Chris Smith is requesting an area variance. He would like to have the lot area reduced from 80,000 sq. ft to 12,400 sq. ft.

Chairman Clarke asks the secretary if this application from Mr. Smith is to be considered for a public hearing next month. Yes states, Linda. Chairman Clarke asked Mr. Smith how did the lot come to be 12, 400sq. ft? Is that the entire lot? Mr. Smith stated yes. Chairman Clarke asks if that is a grandfathered lot? Mr. Smith stated yes, it was originally Cathy's parents property the home and (3) three acres. We were given two acres of the three from her parents. It was split up then. Chairman Clarke asks when the building was started? Mr. Smith states this past summer. I'm still working on it inside and out. Mr. Clarke asks, when it was subdivided? Mr. Smith stated he believes it was 1985. Mrs. Smith stated that her parents gave them the first piece of property then.

Sigrid states her question is why are we looking at this as an area variance here? When I look at R-R zoning and I am looking for site plan use, and permitted uses I don't see that one included. Then I was looking at it as a home occupation and it also not listed there. So contingently it looks more like a use not an area variance. Attorney Pozefsky states to Mr. Smith that perhaps you could explain a little to the board. Chairman Clarke states to Mr. Smith that this meeting is for you to give us more information. The public hearing will be next month. Mr. Smith states that a class - 1 this would be a motor home cleaning business. All done under one roof, it's self-contained. Sigrid asks Fred to clarify that? Fred states yes.

It is a home cleaning service and I talked with Attorney Pozefsky and with Attorney Radner and explained this whole situation along with research on the internet and it is definitely my call on this because if being a motor home, and that is where we come under home cleaning services. It was my choice and I feel it's under home occupation, cleaning service. Sigrid states that under (B) List of Home Occupations (P) house cleaning service; Mr. Mann states, again this was my decision, if somebody doesn't like my decision, they will have to bring it before the board. Attorney Pozefsky states to Fred then what you are saying is that it is a home occupation-1. Yes I do stated Mr. Mann. Attorney Pozefsky states and this requires two acres of land. Yes stated Mr. Mann and they don't have the two acres. They had enough land to meet the setbacks to build the building. Attorney Pozefsky states then

that's why the area variance requests from 2 acres which would be necessary down to in essence a quarter acre. That of course the applicant didn't like Fred's interpretation, that's when they come to the zoning board. Mr. Smith, did you not feel that it was a home occupation-1? What about this decision do you feel wrong with. Mr. Smith states I didn't want to join the two pieces of property, because this is a business piece. The other piece of property is our home we want to keep them separate. With it being a class - 1 business a cleaning service and it being considered as self contained, you can get a mortgage on it. It's like a home.

Jeff Fedor asks that the purpose of the business is primarily the cleaning or the detailing of the mobile home? Mr. Smith states, yes. Mr. Fedor asks it's not engine repair? No, states Mr. Smith it's for detailing steam cleaning carpet cleaning changing screens, changing blinds, waxing and polishing the motor home. Mr. Fedor asks if this could also include any kind of bodywork? No, stated Mr. Smith. Attorney Pozefsky asks to interject. I think what happened here was Mr. Smith came in said this is what I intend to do in this structure and Fred reviewed it and said, you have a principal structure adjacent to it on one lot and next door on a separate lot we have this building. Fred again talked to me talked to Cathi Radner, did some research and concluded, as he should as the zoning and code official he felt this was a home occupation as defined in there based upon the fact that it would be conducted, entirely inside. It falls under that definition of house cleaning services as best as he can classify. Which is permitted if you have enough acreage. The reason there is no request for no use variance as I understand it is, based on Fred's interpretation of the code it's a permitted use, except for the size of the lot, that's why the request for an area variance.

Attorney Pozefsky states I think Sigrid your point is, is this a different use or is this really a home occupation? Sigrid states if I was to call a house cleaning service I wouldn't expect to take my house to the place! I would expect them to come to me. That's what a house cleaning service is. That's how I see it. Not bringing a vehicle on to their property. Attorney Pozefsky states that Mr. Smith is here tonight based on the interpretation Fred gave, which is a permitted home occupation 1 in this zone, he does need a use variance only for

the acreage because it is a (2) two-acre minimum. This is why Mr. Smith filed for the area variance. Mr. Fedor asks, so the two lots all ready exist? Yes, states Attorney Pozefsky. Mr. Fedor asks, the lot we are looking at tonight is all ready a 12,400 sq. ft. lot? Yes, states Attorney Pozefsky. That's the only reason we are here tonight states Attorney Pozefsky. Chairman Clarks asks, there are three separate lots, is that correct? Mr. Smith states no, two; the other one with the house was sold. Chairman Clarke asks Mr. Smith then your house is immediately next to the lot where the garage is. Yes, states Mr. Smith. Mr. Clarke asks there are separate deeds? Yes, states Mr. Smith. Mr. Fedor asks are we set with the setbacks? Mr. Smith stated yes, the setbacks are all in line.

Sigrid asks Mr. Smith to explain the process of the business. Someone would call you, and deliver it to you so that you would only have one vehicle inside the garage, with no impact on the community? Mr. Smith states it will always be inside the garage with no noise factor. This building is very well insulated and sheet rock. Sigrid asks, then there will only be one vehicle on your property at one time? Yes, stated Mr. Smith. I am looking to do one at a time on the weekend, I work full time. This is a part time mobile detailing business. This service is ozone generating cleaning generator that kills of mold and bacteria. It's a primary service we will offer along with vapor cleaning. It gets rid of the dust mites and such. Just a healthier environment for all. Chairman Clarke asks if it is a possibility to join the two lots? Mr. Smith states no, because if he wants to go forward I wouldn't be able to get loans for that. Joining lots with a home to a business lot, it is hard to get a business loan when you have your residence combined with your business.

Mr. Fedor states a question to the attorney. The two separate lots the one with the garage on it will be considered the home occupation. The second lot is a separate lot with the house on it. It could be sold. Attorney Pozefsky states the interpretation that Fred gave me, and correct me if I am wrong is even though they are two separate lots this garage is accessory to the principal lot. Therefore is considered part of the home use. Again, home occupations are tended to go along with the home. For zoning purposes Fred is looking at it, and let me know if I am wrong Fred as a home with an accessory structure, even though they are technically

on two separate lots, because they are owned by the same person. Mr. Fedor states he understands that. And I understand what Fred is looking for and trying to work with for the homeowner down to a T. My question is, in (5) five years (10) ten years (1) one year, could that residence be sold and then we sit here with two disassociated lot owners. Attorney Pozefsky states if there are two different owners, I think the unity of ownership evaporates, and now it loses its home occupation status, because we now have a different owner than who now owns the property with the home. You couldn't look at them as going together any longer and then looking at a totally different situation. Mr. Fedor asks if there is some sort of mechanism that we could put into place. Perhaps something put into a deed, because that is my concern here that in the future we could have it as one owner of the residence and basically an independent business unless there is something there that says, if this isn't owned by the owner next door it's not a home occupation. Chairman Clarke states we could certainly impose that condition. Attorney Pozefsky states yes you can, you have a couple of choices here. You can impose a condition if you were to grant this approval. Then it becomes an enforcement issue, which again burdens Fred with having to keep going out to check who owns the house versus the garage, or you could ask as a condition that the deed somehow be changed to reflect that. One that states as you asked; if the homeowner were to be different than the property with the garage it would no longer be a business. Mr. Fedor states he understands Fred is trying to facilitate this business being started from the lot next to the home, it's a great set up.

Again I am always looking forward to the future, what are we signing up for now, could we end up with two separate situations? Attorney Pozefsky states that if it is not put in the deed, it literally becomes an enforcement issue and it burdens Fred and his office to keep track of this stuff. Much like it would with a special permit and other things. Sometimes it's not until a neighbor complains or something happens to bring it to the attention of the town. So by just putting it into the deed it would trigger the new owner and the home occupation would just evaporate or the new owners would have to come back and re-review it with the town and see what the law is then. Chairman Clarke states that if we did make a positive decision in this case would it be grandfathered for in the future? Attorney Pozefsky states, once you grant an area variance its

good forever. It goes with the land and with the owners. Unlike a special permit which doesn't necessarily go forever. If you grant the area variance, pretty much you are done. It doesn't get re reviewed unless you put a condition in there that causes it to be re reviewed. You could put a condition in there that says the variance stays with the owner but if sold the new owner would have to come back and re apply for a variance or otherwise. Chairman Clarke states that we will set up a public hearing for you Mr. Smith for June 5,2008.

Chairman Clarke asks the public if they have anything they would like to discuss? Vicki Sweet states she has a question now that Mrs. Everts has width drawn her application for a use variance and the original grandfathering has been denied. How and who is going to enforce now that the cabin is only to be used as guest purposes? Chairman Clarke states he believes that would be the case when a complaint is filed. Are you prepared to enforce that at this time? Fred asks, was that so she could rent that to a relative? No, stated Chairman Clarke and Sigrid, its only a guest cottage. Not a rental! Jeff Fedor asks Fred, you have to receive a complaint to see somebody then? Fred states that this is not something I can see from the road, yes, I would need to get a complaint to go on the property. I could knock on Mrs. Everts door and she don't have to let me back to check the cabin I would have to take her word. Chairman Clarke states the decision by this board is that it should only be a guest cottage. Fred states, he understands that, I wouldn't know if there was somebody in there unless I got a call. Linda states that in cases like this that when there are (3) three or more complaints that are unfounded the person being complained about can then file harassment charges. Vicki Sweet asks then if I am calling and filing a complaint and Fred is going there as a code enforcement officer and she won't allow him to check what happens? I don't believe she would stop him if there were a complaint filed, but what I am saying is that if after (3) three unfounded complaints she can file charges against the one complaining. Sigrid states then that would mean she would have had to allow him on the property to check. Linda states yes. If she denies this then she really need to pursue this states Sigrid. Yes.

Chairman Clarke asks Fred what kind of measures would you use to determine if someone was living there or not?

I would actually have to see them there or evidence of their stuff being there. You can't go inside the cabin unless they let me in there. There again, say if I went to her property, because you can see the cabin from there and saw someone there more than once you would assume they were living there.

Mr. Fedor states then there is the next step of finding out the relationship of those people. Exactly states Fred. Chairman Clarke stated that the property was in residential zoning and to be used as a guest cottage and not as a rental. Vicki Sweet said and you gave her (30) thirty days to have the resident in fact evacuate the premises correct? Chairman Clarke states he believes they did. Mr. Fedor states he believes it was from the time of the decision. Secretary said she would have to check the past minutes. Ms. Sweet states the man is still living there. Secretary let the board know Mrs. Everts told her in the office that he was in Long Island at a VA Hospital having surgery. Secretary then let Ms. Sweet know if she had a legitimate complaint to come to the office and file a complaint, other wise, I will not allow you or any one to use me or Mr. Mann or my office in a battle in regard to a civil matter. If there is a personal problem between the two of you, deal with it. Mr. Fedor states that he would appreciate it if members of the public would address the board and keep the communication between the members of the board and public. I would find that a more professional atmosphere.

Chairman Clark states to Ms. Sweet that the ball is in your court, if you want to file a complaint with the building department that you are stating someone is clearly living in the cottage that is not a relative, the burden would be on you at that point or another neighbor who ever files the complaint. If there are other neighbors that have a problem with her renting that or using that as a cottage. I realize that you are the one that is mostly impacted because it is in your immediate back yard.

Chairman Clark asks if there is any other new business? Mr. Fedor is asking for clarification on the Everts case. Did she width draw just for tonight or everything? Secretary stated she had width drawn entirely, I sent her a letter requesting her to come sign a statement and have it notarized confirming she has width drawn her use application. Mr. Fedor asks Fred Mann for future reference, as we see more small business, I'm

trying to get an idea of the process that is involved. A resident wants to start a business whether it is out of their home or an adjoining lot like Chris is doing here, do a lot of times they move forward on that and then come to our building department for advice? Mr. Mann states where Chris is concerned I wasn't sure what he was going to do, but I went down to look at the framing he approached me with his idea and told him I didn't know I would have to do some research and talk with Attorney Pozefsky and Attorney Radner and that was when I came up with that decision. The reason I made that choice was because he plans to have one vehicle in the work area at a time. Chris also plans on purchasing a utility trailer complete with a cleaning unit to tow behind his truck to clean campers at their residence, but not until he retires. This is why I made that choice. Sigrid states the reason why she brought it up is because the case that is before the Planning Board. The gentleman that wants to do the repairs in a residential area. He has his certificate and all. Fred states he doesn't believe he has that yet, he was waiting to file that depending on the turn out at the Planning Board. Like I was saying, it seem like its opening a lot of doors for this kind of stuff to be done that's why I attribute this as a use variance as opposed to an area variance because that certainly sounds like he is looking for a special use permit. I am uncomfortable with it.

Fred states again that after doing a lot of research and talking with Attorney Pozefsky, Cathi Radner this was my decision. Phil Giordano asks Attorney Pozefsky if we are opening a can of worms with a home base business that doesn't have a home on it? Attorney Pozefsky states, I think what is a little troubling here is the fact that these are two separate lots. Legally two separate lots. I think what Fred has looked at is that it is the same owner, they are adjacent to each other, there is a home on one and the structure is on the other as an accessory. The code doesn't say it has to be the same legal lot. There isn't that requirement in the code saying they have to be the same lot. With that being said, you could ask the applicant to make this one big lot. I would have to research and see how far you could go with that. Attorney Pozefsky states he would do some research on it for next months meeting .

Phil Giordano asks what is going on with the Hamm case? Fred asks what? Chairman Clarke states Hamm Road !

Fred states he is coming back next month, he was initially going to withdraw his case. What I get from him is that he knows he can't meet the (4) four items of criteria, but in order for the Town Board to even look at it they need a statement from the board stating he can't meet the criteria. Attorney Pozefsky states he would just like to point out that there are a lot of very interesting questions coming to the board in the past year that have required a lot of thinking and interpretation. Because zoning is so relatively new, you've got so many odd situations out there it may take many years for these things to work themselves through, not only from your interpretation and say precedence but also for these funny situations to present themselves. It could be a generation before all this gets worked through. Chairman Clarke states frankly Marty I am getting very discouraged with the cases that have been coming before us. I'm thinking now of the Emery case. A lot of that I think centers on a lack of enforcement. That to me is very discouraging. I don't know how to put it into words but it's been waning on me, that kind of lack of enforcement. Sigrid states that I think the trailer on Dusty Road is another establishment. They went and put the trailer on in defiance of us. Our decision meant absolutely nothing. Phil states another is the one on Jenny Lake. Sigrid agrees. Attorney states he believes they went to the Adirondack Park Agency. Fred states we haven't gotten anything back from them yet. Sigrid states that was an easement wasn't it? Fred states that on the lot they own they want to retain (50') fifty-foot. Right not it is a grandfathered lot because the lot has been there for years. I believe they need 8.5 acres in the park in the rural use area. The owners want to subdivide it off and sell the remaining piece of property. This is prime property on the lake, and big money yet they want to keep some for the boathouse and maintain that. We had a big windstorm and a tree come down on the boathouse so now we are not sure what they are going to do with it.

Sigrid asks if they don't have restrictions in their association as well? Fred states yes they do. I'm sure they should be complying with that as well. I'm sure they don't want to be looking at that, and seeing their lot sizes shrink and shrink either. Chairman Clarke asks if there is anything else tonight? A motion to adjourn the meeting was made by Philip Giordano and seconded by Glen Tearno. 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

**This meeting closed at 8:00 P.M. and your next meeting is June
5,2008 at 7:00 P.M.**

Respectfully,

**Linda Hamm
Secretary**

Chairman William Clarke