

December 17, 2007

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TOWN OF CORNWALL  
ZONING BOARD OF APPEALS  
DECEMBER 17, 2007

MEMBERS PRESENT: LENORA RANSOM, CHAIRPERSON  
EILEEN REGAN  
TED DOBIAS  
WILLIAM LEE

ALSO PRESENT: ADAM RODD, ESQ.  
ZONING BOARD ATTORNEY

ABSENT: MICHAEL MC GUINNESS

MS. RANSOM: I'd like to call to order the December 17,  
2007 meeting of the Cornwall Zoning Board of Appeals.

JOHN\_&\_CYNTHIA\_LATIMER\_-\_CONTINUATION

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MS. RANSOM: This evening we have three continuations. The first one is on the request of John and Cynthia Latimer, 10 Sugar Maples, they're looking to subdivide an existing parcel into two non-conforming lots. The applicant proposes to create lot number 1 having gross lot area of 3.18 acres with a net lot area of 1.83 acres where a minimum of two acres is required. The applicant proposes to create lot number 2 having gross lot area of 2.55 acres with a net lot area of 1.60 acres where a minimum of two acres is required. This was left open last month. The maps were submitted at the meeting to allow the neighbors to review the maps. Let the record show that the board has received

correspondence dated December 10, 2007 along with pictures from Kathi Ellick, 5 Roaring Brook Road and we also received maps this evening along with a letter dated December 17 from Kathi Ellick regarding the maps which are from the original subdivision for Sugar Maples. Mr. Latimer, is there anything else you'd like to add to the proceedings?

MR. LATIMER: No, I just if I could just see the map and the pictures?

MS. RANSOM: Mr. Latimer, while you're doing that, I will open it to the audience.

MR. LATIMER: I just want to see what I'm looking at first, I want to see what the importance is before I comment.

MS. RANSOM: Okay. Anything you'd like to add? Is there anyone in the audience? Yes? May I have your name and address again?

MR. ELLICK: Craig Ellick, 5 Roaring Brook. You know, this is a zoning board and we, you know, there's all kinds of things to bring you but I think the main focus is, you know, the reason for asking for subdividing first of all, I don't see any hardship in this situation, but aside from that 1.58 acres is so far from the 2 acre minimum that the comprehensive plan was voted on and it truly is something that I think people take seriously. I know we did when they we bought our house, we knew that that area couldn't be built. The reason we bought the map in is because it clearly says I know it was different planning board, lots 8 and 9 can subdivide and that's it. So I don't even understand how it's gotten this far when it's so clearly put when it's two acres and there's a house for sale on the road, it's been for sale for almost a year, I guess they're having a hard time getting up the road to show the house. There's a house available if

somebody needs to buy it so there shouldn't be any hardship. That's all.

MS. RANSOM: Thank you very much. Anyone else like to speak to this issue? Anything else you'd like to add Mr. Latimer?

MR. LATIMER: No, that's all.

MS. RANSOM: Any other questions up here?

MS. REGAN: I have a question. Lot 8 and 9 on this map I have to pull the other one out, what's the, oh, I'm sorry, it's 5 and 5, okay. The other question is could you show me on this map the proposed subdivision? You can draw on it.

MR. LATIMER: This is the one piece and I have all of this, okay, and what we're trying to do is subdivide into two pieces so this will be that other lot.

MS. REGAN: You can draw on that.

MR. LATIMER: I don't know what it is exactly.

MS. REGAN: Well, this shows your lot so that's why.

MR. LATIMER: You go up something like this roughly, you know, the two lots and it's not going to be 1.5 acres, it's 2 1/2 acres but it's the net area, the gross is 2 1/2 acres which is going to leave it with a larger size lot than any other in the area.

MS. REGAN: And your parcel will have?

MR. LATIMER: Basically 2 1/2 also.

MS. RANSOM: You're lot number 1?

MR. LATIMER: Yes.

MS. RANSOM: So you're going to end up with a gross lot area of 3.18 and net of 1.80?

MR. LATIMER: Yes, so they're not going to be below two acres, other than the usable land area and which brings us again to why we have all the deductions, the private road going through the property, the stream, you know, all those deductions added up brings me down to the 1.5 which with that other map that I brought in shows that that lot size even if it was just 1.5 which it's not would still be average size for all the other home sites in that area.

MS. REGAN: Do you have any idea why the note on the map says 8 and 9 maybe?

MR. LATIMER: Yeah, because this subdivision map here is a subdivision map for Roaring Brook, not Sugar Maple. My property is on Sugar Maple, it's a totally different subdivision.

MR. ELLICK: I think they're all the same because they're all part of the same numbered system, lot 1 through 9, so that's kind of silly.

MR. LATIMER: But on my map also I'm lot 1 and on the Sugar Maples subdivision.

MS. REGAN: Well, this says Sugar Maples and that's lot 1.

MR. LATIMER: Yes, but, you know.

MS. RANSOM: Okay, so on this map 2 your lot 1 is 5.73 acres with a stream going down the middle?

MR. LATIMER: Yes.

MS. REGAN: With a stream and with the--

MR. LATIMER: The road.

MS. RANSOM: The easement.

MR. LATIMER: And the other private road that cuts across the property which is why I have the deductions, brings us to below the two acres.

MR. RODD: I'd like to ask a question of you.

MS. REGAN: That's not active this piece here?

MR. LATIMER: No, that's their driveway.

MS. REGAN: You're lot 2?

MR. ELLICK: Yes, ma'am.

MR. RODD: If I can ask a question of Mr. Ellick. When did you purchase your property?

MR. ELLICK: Four years ago, June of 2004.

MR. RODD: Do you have a copy of your deed?

MR. ELLICK: Not with us but we can certainly get one.

MR. RODD: Can you supply that to the board?

MR. ELLICK: Sure.

MR. ELLICK: Just for what purpose?

MR. RODD: Well, do you know if your deed describes your property by reference to the Sugar Maples subdivision?

MRS. ELLICK: It does.

MR. RODD: It would be important for the board to see that.

MR. ELLICK: No problem, we can certainly get it for you.

MS. RANSOM: Anything else?

MR. ELLICK: One last thing, it will have a tremendous impact on the neighborhood, that's one of the stipulations and it will have an impact on the neighborhood. That's all I guess I should say.

MS. REGAN: I have a question. You made a comment that there's currently a home for sale and one of the reasons you feel it's not selling is that they can't get up there?

MR. ELLICK: We heard that from somebody that lives on the road. Again, I don't want to, it's already ugly and it's probably, I don't know, it's already ugly to drive on the road, you know, the reason we don't have a maintenance agreement and we haven't talked to Mr. Latimer is because we've heard from neighbors that have nails in their tires from the construction and there's potholes on the road and, you know, I don't know specifically but this is something that should be considered and that's why we wanted to take pictures, as many pictures we have taken so many pictures of this, like I said, I don't want to get personal. I know it's kind of becoming that way. We bought our house thinking that this area was going to remain pristine. We look at all the other communities around the area and they're all getting blown up, Highland Mills and the houses are everywhere. We bought this land knowing looking at this map seeing that only two acres and no more subdividing and then all of a sudden the bottom line is there's no hardship, I mean, I'm sorry if there was a financial hardship or something I could totally understand that but this is not a

hardship situation. This is somebody that's going to make a lot of money maybe, that's great, I'm all for making money but at the expense of other people and I think at the expense of our town we have a plan at this town everybody voted on, it's 2 acre minimum net is what you look at, you don't look at gross, you don't look at gross anything, you look at net and net, they're so far below the two acre minimum and I'm going to be looking at this house for the next 25 years and that's not what I planned on and nothing has changed since Mr. Latimer has bought this property, he knew that this was not a buildable lot unless he got a variance so that's all I have to say. I appreciate your time.

MS. RANSOM: Okay.

MR. LATIMER: I just have something as far as the zoning on the two acres, didn't that take a place after June of '04?

MS. REGAN: I don't recall.

MR. RODD: You mean the net?

MR. LATIMER: Yeah.

MR. RODD: I believe so.

MR. LATIMER: Yeah, I know it does, I'm just bringing that up.

MS. RANSOM: It was revised in March of '06.

MR. LATIMER: When he purchased this property, it still would have been fine had I done this then but I was in the process of building my own house at the time money was an issue because I was building my own house, that's why I didn't go with the subdivision at that time. Couple years later now things are working out a

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little better now I want to do the subdivision, that's what happened. Money being a motive, it always is, I'm looking to build a house for my sister-in-law, that's who's moving in, its not like the house is going up for sale and we don't know who's going to be moving in. My sister-in-law is looking to move in. That's it.

MS. RANSOM: Thank you. Anything else?

MR. RODD: No.

MS. RANSOM: Thank you.

MR. RODD: I would ask if you can send a copy of your deed in to the building department to the attention of Gary Vinson.

MRS. ELLICK: Okay.

BUTTERHILL\_DAYCARE\_-\_CONTINUATION

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MS. RANSOM: Our next public hearing this evening is on the continuation on the request of Butterhill Daycare relating to property located at 10 Torrey Lane. The applicant is seeking to use an existing building as a daycare center with insufficient lot area and lot width. The ordinance requires a lot area of 60,000 square feet and a lot width of 200 feet where the applicant has 32,443 square feet and a lot width of 195 feet. Let record show that Helen Bunt has received a proxy from the owner to speak on their behalf and we have also received a site map. Would you like to continue your presentation please?

MS. BUNT: Yes, the question that was before you the proxy obviously wasn't completed properly but the question was the amount of variance that I'm asking for and I referred to the playground as being outside the area and you can see it there on the map, it's not a part of the Davino property, it's a part of Sheila O'Donnell's property, so that's in addition to the land that I would be using with that building.

MS. RANSOM: So then to your lot area you have added according to the map 5,906 square feet which then would bring if we added that on you would be requesting a variance of 21,651 square feet or 36 percent request?

MS. BUNT: I think that's what it comes to, yeah, and the question of the buffer I'm thinking I'm not sure where the buffer, where they would want the buffer but if it were along Torrey that fencing there, I mean, the fact that the day school that's been there for over a year and a half now with no incidents or no problems of any kind because of there being no buffer, I would have to think that that history could help you to lend yourself to grant that variance of no buffer.

MS. RANSOM: Are there any of the playground apparatus

near that fence line that's on, faces Torrey?

MS. BUNT: There's a piece right about where you see the 5930 on there, it's right about in there, there's a climber piece but all my equipment was placed in by Miracle Creation and done according to code so it's the right amount of feet from the fence, right amount of feet from each other, right amount of feet in the ground, I mean, they won't put anything in unless it's all properly placed on that property so there's clearance from the fence to any equipment. The swings are probably a little bit to the right of that lease line that you see where it says street and lease line in and that comes down, the swings are about there and they have to have the clearance from all other apparatus and from all other fencing so everything on there is placed according to state regulations.

MS. RANSOM: Okay, and the edge of the pavement is, I don't know, it's really kind of hard to tell from the map, is it like five or six, seven, ten feet from your--

MS. BUNT: The pavement meaning Torrey?

MS. RANSOM: Yes.

MS. BUNT: It's set in, I would think it's probably it's about 4 feet in I think.

MS. RANSOM: Okay, and you had mentioned last month that there's a strip of grass then between your fence and the pavement.

MS. BUNT: And the road, yes.

MS. RANSOM: Okay, questions up here? Is there anyone in the audience who'd like to speak to this issue? Anything else you'd like to add, Helen?

MS. BUNT: No, I think you saw the article in the paper and as a result of that I have to tell you I have ten people that have already signed up and they don't care when I open, I said I don't know if I'm going to open but they don't care, I mean, that's the need that you guys will be filling with the variance so--

MS. RANSOM: Thank you very much.

MS. BUNT: I have one question. When do you vote on it?

MS. RANSOM: We may vote tonight, it depends on how late things are. So you can contact the building department in the morning, we'll let them know what the outcome of tonight's meetings are.

MS. BUNT: I don't know if this is a question I can ask you but then I have to go to the planning board, right?

MS. RANSOM: Yes.

MS. BUNT: If you're kind enough to grant this.

MS. RANSOM: Anything else?

MS. BUNT: No, that's it. Thank you very much.

ORANGE\_COUNTY\_RADIATION\_ONCOLOGY\_-\_CONTINUATION

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MS. RANSOM: Our next public hearing this evening is on the request of Orange County Radiation Oncology relating to property located at 2565 Route 9W. They are requesting to construct a 20 foot by 84 foot rear one story addition with insufficient rear yard. The ordinance requires 35 feet, the applicant is proposing 15 feet. The applicant is also seeking a variance to allow 23 parking spaces where 31 are required.

MR. SULLIVAN: Good evening, my name is Jim Sullivan with Tectonic Engineering. I understand that the town has received a copy of a letter from the Orange County Department of Planning allowing this board to make a decision. Just as a review of the application, this essentially what predicated the application was the need to replace an existing radiological machine and there are several site constraints that have caused the need for these variances, specifically substantial amount of rock on the west side of the property and essentially trying to bring the addition that's needed into the site in an environmentally sensitive way demonstrated in the application, the various levels of criteria for the variances with respect to the 20 foot variance that's being sought for the rear yard setback, I have discussed the location of that as it relates to property proposed in the rear, the fact that the actual elevation of the proposed addition will be at or below the first floor elevation of that proposed home in the rear and the addition does not affect lots 18 and 20 of that proposed subdivision. The addition is sited such that it is located in an area that's already been cleared which would preserve the wooded areas on the west side and on the east side. It would also maintain existing parking that exists on the east side. I have gone through basically the costs that would be entailed should the addition be positioned in any other way with respect to the parking variance, 23 spaces are provided and 31 are required and 8 spaces the variance equates

to 8 spaces, again, the intent I had in terms of the application was to show that number one, the actual demand as it exists today and as it will exist after the addition is built is far less than the 18 parking spaces that I provided. We took sample pictures and we provided documentation showing the doctor's logs for patients on two peak days that he sees the most patients and the total number of parking spaces that were occupied at the peak time was seven spots. I have gone through the employee load and the number of patients that could be seen and that equates to ten parking spaces total, seven employees and three parking spaces for patients every 15 minutes, granted there might be one person that might arrive earlier but on a general basis people are in and out and that can be pretty much said today and again once the addition is made. One other thought that I have is a question was brought up about whether or not the two machines would be operating at the same time. And the reality of it is it quite very well could happen that that might be the case, as the doctor has explained in the last meeting, if you take that and now we have four patient rooms, still have seven employees at the maximum loading that he can handle, the maximum number of people that he could handle which he's explained is pretty much almost improbable given the community today the number of patients that he sees but if that were to happen he would have as opposed to ten parking spaces being occupied he would have 11 parking spaces occupied every 15 minutes one additional patient. Again, we're providing 23 parking spaces, 18 was originally provided and we're trying our best to meet the code while also trying to keep a practice alive and also allow patients who are suffering with cancer to still be able to see the doctor that they choose. We all know in this world of managed health care it's always a benefit to be able to see a private doctor as opposed to going to a clinic or hospital. So I hope the board will consider all these facts and allow these variances to go forward.

MS. RANSOM: If Dr. Mishra can see three patients in 15 minutes with one machine, why wouldn't he see six patients in 15 minutes with two machines?

MR. SULLIVAN: One machine is one room and there are two other rooms, there's basically three total patient rooms, one of which has this radiological machine. So supposing that the construction went on, the new machine was installed and the existing machine was still able to run cause I have explained it's nearing its end of its service life but if it were running at the same time that would be one more person that could be seen in that 15 minute period. So it's not double the number of people, it's one person per room every 15 minutes and every procedure runs approximately 15 minutes.

MS. RANSOM: Okay, thank you. Anything else you'd like to add? Dr. Mishra, anything else you'd like to add?

DR. U. MISHRA: Two machine rooms can only have one patient each, that's 2,000 square foot two people, two patients which we don't see every day of the week. There's only two other rooms where we see them for followups and checkups, most other things are into the big rooms, thousand square foot plus two rooms, they have only two patients at any particular time if at all that's possible and that's probable. Otherwise, it's only one patient per room per 15 minutes.

MS. RANSOM: Okay, thank you. You don't happen to have the sketch of what this proposed building is going to look like when you have added these two additions?

MR. SULLIVAN: I do not. Dr. Mishra, do you have it with you?

DR. U. MISHRA: No, I don't but in the back at this time the roof is about 15 to 18 feet tall, this will be like a flat room which will stay right behind and the

new machine room where right now we have a little walkway but this, so that will exactly match to the outline of the building. We really haven't gone to the architect for the designs yet, we had a rough sketch but we have not gotten to the final how it will look and everything.

MR. SULLIVAN: If I might add we did show that plan at the last meeting.

MS. RANSOM: Okay, any other questions? Anything else you'd like to add?

MR. SULLIVAN: No, thank you.

MS. RANSOM: Thank you very much.

MR. SULLIVAN: Thank you.

REGULAR\_MEETING \_\_\_\_\_

MS. RANSOM: The minutes of the November 19 meeting have been distributed. Are there any additions or corrections? If not, do I have a motion to approve the minutes as submitted?

MR. LEE: So moved.

MR. DOBIAS: Second it.

ROLL CALL

MR. LEE	AYE
MR. DOBIAS	AYE
MS. REGAN	AYE
MS. RANSOM	AYE

MS. RANSOM: Do I have a motion that the board go into closed session to address legal issues with board's counsel?

MS. REGAN: So moved.

MR. DOBIAS: Second it.

ROLL CALL

MR. LEE	AYE
MR. DOBIAS	AYE
MS. REGAN	AYE
MS. RANSOM	AYE

(Whereupon, the board went into closed session.)

(Discussion was held off the record)

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LATIMER\_-\_DECISION

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MS. RANSOM: Let the record show that we do have County Planning for Latimer. They're leaving it to local determination and we're requesting a copy of the deed for the Ellick property.

BUTTERHILL\_DAYCARE\_-\_DECISION

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MS. RANSOM: The next public hearing we had this evening is on the request of Butterhill Daycare, 10 Torrey Lane. The County Planning has left it to local determination. The variances sought are the ordinance requires 60,000 square feet and the applicant is proposing 32,443 square feet and the lot width the ordinance requires 200 square feet and the applicant is requesting or is providing 195 feet. Shall we take the grounds for relief one at a time? Will the variance sought produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties in the neighborhood in which the applicant's property is situated?

MS. REGAN: No.

MR. DOBIAS: No.

MS. RANSOM: And there's already a school on the property so the daycare will just basically mesh with the use and the daycare facility that's already there. Can the benefits sought by the applicant be achieved by some method feasible for the applicant other than an area variance?

MS. REGAN: No.

MS. RANSOM: And as I think as Helen mentioned this is one of the bigger pieces of property on Main Street and she had also spoken to the state regulators and they were fine with the layout for the children. Is the requested variance substantial? I think the lot area, the request is almost 46 percent but as was pointed out this is the biggest piece of property pretty much right there in the center of town.

MS. REGAN: There's really no choice in the matter.

MS. RANSOM: Exactly, thank you. Will the proposed variance have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

MS. REGAN: No, not at all.

MS. RANSOM: No, and as was stated earlier, there's already a daycare or a school facility there. And the third item is the applicant is requesting a waiver for the buffer for the playground. Shall we take those the grounds for relief one at a time as well? Will the variance sought produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties in the neighborhood in which the applicant's property is situated?

MS. REGAN: No.

MR. DOBIAS: No.

MS. RANSOM: She testified that the playground has been there for a year and half and it has children that are three to six, I guess as compared to the use that she's planning to use it for which is 18 to 29 months. Can the benefits sought by the applicant be achieved by some method feasible for the applicant other than an area variance? Well, since it's existing it's already been there.

MS. REGAN: So it won't, no.

MS. RANSOM: Is the variance substantial? Not really, it's already been there, it's an existing playground. Will the proposed variance have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

MS. REGAN: Not at all.

MS. RANSOM: Not really, nothing is changing, she did testify that there was mulch that extended from her playground towards the road so that there's some sort of buffer there. She also talked about possibly putting forsythia along the fencing. Is the applicant's alleged difficulty in complying with applicable zoning self-created?

MS. REGAN: Yes.

MS. RANSOM: Yes, but the playground is already there and it has stood the test of time, the children have been there, have been safe. Do I have a motion that this is a Type 2 Action under SEQRA?

MS. REGAN: So moved.

MR. DOBIAS: Second it.

ROLL CALL

MR. LEE	AYE
MR. DOBIAS	AYE
MS. REGAN	AYE
MS. RANSOM	AYE

MS. RANSOM: Do I have a motion to approve the request for area variances for Butterhill Daycare and to approve the waiver of the buffer landscaped strip?

MR. LEE: So moved.

MR. DOBIAS: Second it.

ROLL CALL

MR. LEE	AYE
MR. DOBIAS	AYE
MS. REGAN	AYE
MS. RANSOM	AYE

ORNAGE\_COUNTY\_RADIATION\_ONCOLOGY\_-\_DECISION

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MS. RANSOM: Next is the application of request of Orange County Radiation Oncology. Let the record show that County Planning has left this to local determination. Okay, they're seeking a variance to construct a 20 foot by 84 foot rear one story addition with insufficient rear yard, ordinance requires 35 feet, the applicant proposes 15. They're also looking for a variance from the total number of parking spaces from 31 to 23. Will the variance sought produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties in the neighborhood in which the applicant's property is situated?

MS. REGAN: No.

MR. DOBIAS: No.

MS. RANSOM: No, and I think they testified to the fact that the addition is going to be built into the land in the back so you're not going to be able to see it from above. So it does have some natural screening there. Can the benefits sought by the applicant be achieved by some method feasible for the applicant other than an area variance?

MS. REGAN: No.

MS. RANSOM: No, I believe they testified that this was the only place on the site that they could put the addition. Is the requested variance substantial? It's over half but I feel that because of the topography of the property the way it's going to be situated against the hill and it's not going to affect the subdivision that's in the back that it's not a substantial request. Will the proposed variance have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

MS. REGAN: Not at all.

MS. RANSOM: Not really.

MR. DOBIAS: It adds.

MS. RANSOM: It's the same treatment that's going to be going on. The addition of the, as was testified to the addition of one machine is not going to increase the number of patients, it could possibly increase by one but that's not significant to create parking issues as was testified and as they demonstrated they showed a number of pictures at various times where employees and patients and there was still plenty of parking. Is the alleged difficulty in complying with applicable zoning self-created?

MS. REGAN: Yes, however he testified the technology of the old machine was nearing its end and needed to be replaced by new technology.

MS. RANSOM: Okay, anything else? Do I have a motion that this is a Type 2 Action under SEQRA?

MS. REGAN: So moved.

MR. DOBIAS: I'll second it.

ROLL CALL

MR. LEE	AYE
MR. DOBIAS	AYE
MS. REGAN	AYE
MS. RANSOM	AYE

MS. RANSOM: Do I have a motion to approve the variances requested by Orange County Radiation Oncology?

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MR. LEE: So moved.

MR. DOBIAS: Second it.

ROLL CALL

MR. LEE	AYE
MR. DOBIAS	AYE
MS. REGAN	AYE
MS. RANSOM	AYE

MS. RANSOM: Motion to adjourn?

MR. LEE: So moved.

MR. DOBIAS: Second it.

ROLL CALL

MR. LEE	AYE
MR. DOBIAS	AYE
MS. REGAN	AYE
MS. RANSOM	AYE

Respectfully Submitted By:

Frances Roth  
Stenographer