

January 22, 2008

1

TOWN OF CORNWALL  
ZONING BOARD OF APPEALS  
JANUARY 22, 2008

MEMBERS PRESENT: LENORA RANSOM, CHAIRPERSON  
MICHAEL MC GUINNESS  
TED DOBIAS  
WILLIAM LEE

ALSO PRESENT: ADAM RODD, ESQ.  
ZONING BOARD ATTORNEY

ABSENT: EILEEN REGAN

MS. RANSOM: I'd like to call to order the January 22,  
2008 meeting of the Cornwall Zoning Board of Appeals.

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

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MS. RANSOM: Our first hearing this evening is the continuation of the request of John and Cynthia Latimer, 10 Sugar Maples requesting an area variance to subdivide an existing parcel into two non-conforming lots. Let the record show that we have received documentation from Kathi and Craig Ellick regarding the deeds for the subdivision that were requested at the last meeting. Good evening, Mr. Latimer.

MR. LATIMER: Good evening. All right, here we are again. As we all know, I am here seeking an area variance so I can build my sister-in-law a home. I also know that the board is charged with the difficult decision in regards to this variance because there is

some opposition. However, I would like to point out a few things that may make this easier.

First of all, there will be some benefits to myself and my family. My wife will benefit tremendously by having her sister living next door. There will also be financial gain for my family in the sale of the property. Lastly, the money that we have invested in this project that we started in July of 2006 will not be lost.

Second, this variance will not create an undesirable change in the character of the neighborhood. This was shown with the map I produced showing all of the area home sites with their lot sizes. I believe there will be no negative impact on home values in the area with a new home. The area variance that I am seeking will still leave the gross property above two acres. This is not a use variance where I would be changing the characteristics of the neighborhood, for example a strip mall or a bar.

Third, if this variance is granted it will not endanger the health, safety or welfare of the community. There will be no negative environmental impact on the neighborhood. Any concerns regarding this will be addressed during the planning board stages and any requirements for the protection of the land will be strongly adhered to.

Fourth, there is no other way feasible for me to be able to build a home for my sister-in-law without this variance. The matter of this variance was not self-created but is due to the easements that run through my property and service the adjoining properties. These conditions were pre-existing.

If the board would like to make any suggestions or place limitations on this variance that you feel will help make this an easier transition for anyone concerned I am open to everything and will be glad to see them through. I would like to thank the board and the town for allowing me the time to petition this variance. I know that it has consumed a lot of your time and patience. I feel that I have produced all of

the pertinent paperwork and that I have answered all of the questions raised. At this time I have nothing further to produce and would be happy to hear anything the board has to say or answer any questions.

MS. RANSOM: There was a letter of January 18 from Gary Vinson sent to Miss Ellick requesting a copy of the easement that allows them to have their private road across your property. Does anyone have that easement information with them tonight?

MS. ELLICK: I have some information.

MS. RANSOM: Can we have your name?

MS. ELLICK: Kathi Ellick.

MS. RANSOM: Thank you. And your address?

MS. ELLICK: 5 Roaring Brook. I didn't know about this request until Friday and I looked into it, I could not find the information but what I found was I did research and I found the testimony from the minutes, I got one for everybody to look at, and these are the minutes from the division of the property that describe the road intentions.

MS. RANSOM: Is there a written easement though that allows your private road Roaring Brook to go over Mr. Latimer's property?

MS. ELLICK: There is on that map and there is a road maintenance agreement as well but the deed does not specifically say anything about the easement. It says there's an easement but it doesn't describe it carefully. The map does say in favor of lot 2 but because that was a map that was finally agreed upon by the board that I thought that that would equal as much of the deed because it describes how the easement was to be. The deed wasn't specifically outlined as--

MR. RODD: The board is going to--

MR. LATIMER: I'm not disputing, there is an easement, I understand that they do, that's not--

MR. RODD: The board is going to need a copy of the easement.

MR. LATIMER: But I have a copy of the deed myself, there is no copy of the easement like I went to the Hall of Records myself, there's nothing, I have it with me.

MR. RODD: To the County Clerk's office?

MR. LATIMER: Yeah, I have the deed, there's not, it says there's an easement but there's no easement posted anywhere.

MS. ELLICK: That's why I thought that the map that describes all this and matches all of the lots adjacent would be sufficient because it describes that they were all referring to map 5231.

MR. LATIMER: If Schedule A just refers to the easement and I pulled a copy of both these. There's no actual copy of the wording of the easement but I'm not disputing that, I mean, I don't have a problem with them driving across the property. I just have a problem with it affecting me not being able to use my property.

MS. RANSOM: Is there anyone else who'd like to speak to the issue? Yes?

MS. SCHULT: I would, my name is Helen Schult, I reside at 15 Roaring Brook Road and I have great concern that in allowing this variance, even though the gross net of the property is over two acres that this will

facilitate an open door policy to other members of this community that have lots that are quote subdividable. If you start granting variances for 1.6, where does that stop? Do we go 1.5, do we go 1.4? We embrace the comprehensive plan of this community because we prefer to live on property that's greater than two acres or more. I understand that Mr. Latimer did bring a map here and did show that several of the homes off Rock Acres and Sugar Maples at this time would not have been allowed to be built. That's the past, we're protecting the future. I have four children that I've raised and brought up in Cornwall and I would like to preserve Cornwall and that's why I voted on the comprehensive plan. I just would like to know from the board when it's going to, what's the cutoff, if it said two and now we're going to go to 1.6, what prevents one from going to 1.5? I have four acres at the top of Roaring Brook Road and it is quite conceivable that I could subdivide that property and build another house. That's not my plan. My plan is to save the space that I love so I would like, I don't think it's not an unreasonable request to ask the board when do we stop, when do we say enough is enough and 1.6 is enough and someone comes here in two months says you granted 1.6, we're 1.5 and it just continues and yes, it will affect our community. It will affect that whole side of 32, it will be a change in our community. Thank you.

MS. RANSOM: Anyone else like to speak to this issue?

MR. LATIMER: I'd like to just bring up the point that Mr. Zayas and Helen Schult did do a subdivision themselves of the one pieces of property which left them with the 4.2 acres on top and then also gave the other house which they sold to make a profit for 1.9 acres so what I'm doing is no different than what they have done in the past.

MS. SCHULT: That subdivision, excuse me, was way back in 1985 prior to the zoning laws that are in place at

this time and I was not party to that, Mr. Latimer, that property was owned solely by Mark Zayas.

MS. RANSOM: Thank you. Anyone else like to speak to this issue? Where are we as far as the easement?

MR. RODD: Well, at this juncture, I'm going to have to research the easement issue. You're saying you couldn't find an easement?

MR. LATIMER: Yeah, I mean, there was no easement posted when I went and pulled the records, I mean this is the deed and the easement should have been with that, right, you know, if I'm not mistaken when we pulled that there was nothing else about the easement but I'm not disputing the easement in any way, the easement's not even a concern.

MR. RODD: We're interested in whether there was a written easement and the terms of that written easement if there was a written easement specifically was this an exclusive easement or non-exclusive easement. From what you're telling us there's no written document, the easement is referenced as a right-of-way on the subdivision map and that's all there is. I'll have to look into that and verify it because it's one of the issues that was raised during the prior proceedings, that your right of access was disputed by your neighbors, that's why the issue has come up.

MR. LATIMER: Yeah, that has come up before in the planning board stages also prior and that's when I had my attorney here present and I thought that they resolved all that during the planning board stages, that's the only reason I was even put forward to the zoning board. I mean this has been going on since July of 2006, I have been to plenty of meetings and this is just one issue that just kept being brought up and brought up but I thought it was resolved, that's why I was placed to the zoning board.

MR. RODD: Let me ask you this. Is your attorney prepared to give us some information concerning the easement issue on title as to specifically whether there's a written easement?

MR. LATIMER: Absolutely, let me just see if I have anything. This is my Schedule A, that's all that we have as far as an easement goes, they haven't able to produce anything. I haven't, the attorney, I mean, I don't, I think we're searching for something that just doesn't exist.

MR. RODD: Okay, do you understand why it's not--

MR. LATIMER: I thought that it was solved in the planning board stages, I thought that's what led me to the zoning board, you know, cause it was one of the main issues in the beginning, you know, from day one cause actually even before day one I was told that I couldn't go on my property which is totally ludicrous.

MR. RODD: I'll have to look into it to clarify it because I appreciate what you're saying but on the issue of the easement what I'm hearing is that we have looked, we can't find an easement, therefore, there's no easement but I'm not sure you're certain about that and we want to be certain about that.

MR. LATIMER: Okay.

MS. RANSOM: Therefore, we'll leave this hearing open until next month, the February meeting is going to be a Tuesday in February.

MR. LATIMER: That will be the only issue then that you can, is there anything else I need to work on?

MS. RANSOM: At this point the easement is the main issue right now.

January 22, 2008

8

MR. LATIMER: Okay.

KAREN\_E.\_ELMES

MS. RANSOM: Next public hearing is on the request of Karen Elmes. Notice is hereby given that the Zoning Board of Appeals of the Town of Cornwall, County of Orange, State of New York will hold a public hearing at the Town Hall, 183 Main Street, Cornwall, New York on January 22, 2008 at 7:30 p.m. or soon thereafter as the matter can be heard on the application of Karen Elmes relating to property located at 16 Deerfield Lane and designated on the tax map as Section 34, Block 1, Lot 106. The applicant seeks an area variance to Section 158-12 Part One, SLR district, use group B, column number 4 of the zoning ordinance in order to subdivide an existing 5.3 acre parcel into two residential lots where lot number 2 will have insufficient lot width. The ordinance requires a lot width of 200 feet and the applicant proposes 64 feet at the front yard setback and 147.2 feet at the rear yard setback. The zoning board will at above time and place hear all persons interested in the application, all written communication should be received by the board at or prior to the hearing. Dated: January 4, 2008. By Order of the Zoning Board of Appeals, Town of Cornwall, Lenora Ransom, Chairperson. Let the record show that we do have a proxy to allow Ms. Babcock to speak on behalf of the applicant.

MS. BABCOCK: Good evening, my name is Michele Babcock from Jacobowitz & Gubits. I'm here on behalf of the applicant, Karen Elmes, for an application for an area variance for the lot width requirements of proposed lot number 2. For the record, I do have the affidavit of publication and the affidavit of mailing. Just for some background on this application the property is located in the SLR zoning district off of Angola Road and it's approximately 5.3 acres in size. The applicant has submitted an application for a two lot subdivision to the planning board to allow for the construction of one new dwelling on proposed lot number

2. Both of the lots meet all the bulk requirements set forth in the zoning code with the exception of the lot width requirement for proposed lot number 2. However, the lot width will not be changing after the approval of the subdivision. The existing lot has a lot width of 64 feet at the front yard setback and 147.2 feet at the rear yard setback. The requirement is 200 feet at the front yard and 160 feet at the rear yard setback. Like I said, the lot width will not be changing after the approval of the subdivision based on the configuration of proposed lot number 1. The house that's currently contained on lot number 1 has access off of Deerfield Lane. The new home on proposed lot number 2 will have access directly onto Angola Road. There is no other available land and no other way to subdivide the property without the requested variance. The surrounding properties all contain single family homes and the adjoining lots are the same size if not smaller in most cases to the proposed lots. The requested variance is not substantial, is not self-created and doesn't create any adverse environmental impacts since the fact that the lot width will not be changing. We're here tonight to answer any questions the board or the public may have on this application.

MS. RANSOM: Have you got a curb cut from the county for Angola Road?

MS. BABCOCK: No, right now the plans are at the planning board, the planning board engineer has requested detailed plans and specifications as far as sight distance and curb cut to be forwarded to the Orange County Department of Public Works. At this time, we have not received any comments from them.

MS. RANSOM: Now, why can't this road or the driveway go onto Deerfield Lane rather than Angola Road?

MS. BABCOCK: At this time, the code limits a total of

six houses to be able to have access off of Deerfield Lane and currently there are at best six so this house could only have access directly off of Angola Road.

MS. RANSOM: How many feet is this driveway?

MS. BABCOCK: I would say 360 feet, that's just a rough finger estimate.

MS. RANSOM: And the home is already there on lot number 1, correct?

MS. BABCOCK: That's correct.

MS. RANSOM: And right now this is all one parcel?

MS. BABCOCK: That's correct. It currently is 5.3 acres so the applicant is proposing with the deductions a net acreage of 2.004 and 3.598 acre parcel.

MS. RANSOM: So now does lot number 1 have the proper road frontage on Deerfield?

MS. BABCOCK: It does, lot number 1 meets all of the bulk requirements as does lot number 2 with the exception of lot width and that's the lot width that currently exists today, we're not changing that.

MS. RANSOM: Okay and now isn't there a stream that runs through here?

MS. BABCOCK: There is, it's right down in through here, that's why the driveway's proposed in this location.

MS. RANSOM: So is the driveway going over the stream?

MS. BABCOCK: Yes.

MS. RANSOM: So then you're proposing to build a

bridge?

MS. BABCOCK: Yeah, there's a proposed culvert under there which had been reviewed by the planning board engineer. I don't have the specifics but I can look to his comment if you think that would help. That's just something he's requesting on the design plan for the Orange County Department of Public Works to review.

MS. RANSOM: Okay, questions, Mike?

MR. MC GUINNESS: Not at this time.

MR. LEE: No.

MR. DOBIAS: No.

MS. RANSOM: Is there anyone in the audience who'd like to speak to this issue?

MS. BABCOCK: If I may just quickly I didn't receive a copy but it is my understanding that this was referred to the Orange County Department of Planning and it did receive recommendation?

MS. RANSOM: Right, they have given us some comments and they have left it to local determination. Is there anyone that would like to speak to this issue? Can we have your name and address for the record?

MR. DUMOULIN: My name is Todd DuMoulin, I live at 15 Raccoon Lane. The Elmes' property is on my western border. I have some questions and some comments for the board. My first question is the proposal on the survey that you have there says that the road frontage is 307 feet. I don't understand how that comes about. If you look they're combining Angola Road which is a county, town with a private road, I don't know if that's possible or not but I just ask that question. It is considerably less, it's about 57 feet on Angola

Road but that's the only road frontage, there's a, I believe there's 150 feet required for the code. That's one question. And one of my questions you have already addressed basically is has the county approved the new road coming out on Angola Road and with the culvert situation and the water situation there I think it's gonna need some engineering. The code requires I believe at 60 foot 60 foot frontage in front of a house is where the front line setback is supposed to be, is that correct? From the front of the house, from the line back 60 feet is where the front setback is supposed to be, the map is actually 30 feet right now and it's not properly represented on the map I don't believe. The rear lot width of 147.2 feet does not include the area of 25 percent slope in the back. If you go at the setback line in the back and you measure across there it says it's 147 feet but if you take the 25 percent slope out it's actually 122 feet plus or minus a few feet. But my question is when you measure do you use the net or the gross for the measurement? As you can see along the side there on the western on the eastern boundary of the property there there's property that's at a 25 percent or greater slope. Is that allowed to be used in the measurement? That's my question for your side width measurements. And then I don't understand the 64 foot front lot width, I don't understand that at all. I think it's more than that actually on the front lot width but the map doesn't or the survey doesn't seem to track the properly, I don't understand that. All right, some more of my concerns are on the survey map, just for the record, the Melvin property is represented as Zumo property, the Zumo property is not represented at all, Romaine property does not exist anymore, he's been gone for some time, Melvin now occupies that property. So the eastern properties on the survey are incorrect or mislabeled. The proposed lot number 2 request represents 3.26 gross acres, I believe this is called a flag lot with a majority of the acres used as access to the building area of the lot. The actual building area is close to

rectangular with an approximate area of about 1.3 acres, the code is two acres for SLR use group B, had this building lot been at the appropriate front and rear widths we wouldn't need to be looking at a variance. I don't really believe all pieces of property should or could be developed with houses. There's a standard for control to allow trees, grass bushes and wildlife to also cohabit within the SLR zoning. The town has provided these standards and I would like to go on record as being in favor of following these standards. Thank you.

MS. RANSOM: Thank you. Is there anyone else that would like to speak to this issue? Would you like--

MS. BABCOCK: May I attempt to, I'll try to go in order. With respect to the road frontage, that statement was correct, we're using the private road as well as the town road in order to determine frontage. We did go to a planning board work session, at that time we met with the building inspector who determined that that was appropriate, that's how the town calculates road frontage and that we wouldn't need a variance with respect to frontage. The next one was the question of the 60 foot front yard, this is in the SLR zoning district, use group B which is a 60 foot required front yard setback. As far as the slope of the property, both of the slopes have been accounted for and deducted, shown on the plan versus the gross acres versus the net acreage for both lots. The front lot width it was questioned as to that it possibly could be more than 64 feet, we're providing these numbers off the plan that the surveyor had given to us, so we do in turn think from the front yard setback that 64, that it is 64 and from the rear yard setback it's 147.2. As for the issue of the flag lot, this lot we're not changing the configuration of the lot width towards the front yard setback nor the rear yard setback, I don't believe this classifies as a flag lot.

MS. RANSOM: Thank you. Anyone else like to speak to this issue?

MR. RODD: Quick question, Michele, when did you expect to hear from County DPW about the curb cut issue?

MS. BABCOCK: We're hopeful, I'm not really sure to be honest.

MR. RODD: Has the request been submitted already?

MS. BABCOCK: I'm not sure to be honest with you.

MR. RODD: Okay.

MS. RANSOM: Because the curb cut does have significant bearing on this request.

MR. RODD: If you can update the board with that information when you get it of course.

MS. BABCOCK: Of course.

MR. RODD: As to if it was submitted and the status of it.

MS. BABCOCK: If I could ask the board how does this affect the current application for a lot width that's currently not changing?

MS. RANSOM: Well, if you don't have a curb cut onto Angola Road then how are you going to put this driveway out there?

MS. BABCOCK: We're willing to currently pursue our application for a lot width variance and receive our determination and proceed at the planning board, of course, as you know, the planning board will not grant us approval until we determine how access will be given to the site. If at that time we have to explore

another alternative which may be possibly coming back to this board we'd be willing to do so at that time. We don't believe that there should be any issue because there are adequate sight distances down there, that there should be no reason why we wouldn't be granted a curb cut permit.

MS. RANSOM: Thank you. Is there anyone else who'd like to speak to this issue? Mike, questions?

MR. MC GUINNESS: No.

MS. RANSOM: Ted?

MR. DOBIAS: No.

MR. MELVIN: I'm Dan Melvin, I'm at 11 Raccoon Lane. It's really, this is really a question to the board. How do you determine whether something is a flag lot or like in this instance whether the three acres is what's determined for the building space or whether it's the one and a third acres over at the end where the building would take place? Is there a set way of determining that?

MS. RANSOM: I'll defer to counsel.

MR. RODD: Well, they do have the required net acreage, I believe it's a 2 acre net minimum in this zone and they have provided more than that in terms of their net acreage, that's not a function of the shape of the lot.

MR. MELVIN: Just overall lot size not where it's being built?

MR. RODD: Right.

MR. MELVIN: The other question or point of clarification I think it's more like 800 feet the length of the driveway, just my estimate.

MS. RANSOM: Thank you. Is there anyone else who'd like to speak to this issue? Okay, is that it?

MS. BABCOCK: Yes.

MS. RANSOM: Okay, we'll leave the hearing open.

MS. BABCOCK: If I may, again, we would of course respectfully request that the board close the public hearing and make a decision on this application this evening.

MS. RANSOM: Well, we have heard quite a bit of testimony and I think that I heard what you said about the curb cut but I'd still like to know what's going on with the curb cut before we move forward.

MS. BABCOCK: Okay, would there be any possibility for the board to close the public hearing this evening and I will provide that information to counsel prior to the next hearing, the next meeting date?

MS. RANSOM: At this point, it's up to the board but I personally would feel we should leave the hearing open. How does everyone feel?

MR. DOBIAS: Yes.

MR. MC GUINNESS: I think we should leave it open.

MR. LEE: I agree.

MR. DOBIAS: Leave it open.

MS. BABCOCK: Very good, thank you for your time.

MS. RANSOM: Again, our next meeting is February 19th, it's a Tuesday.

January 22, 2008

18

MS. BABCOCK: Thank you.

REGULAR\_MEETING

MS. RANSOM: Okay, the minutes of our December 17 meeting have been distributed, are there any additions or corrections? Do I have a motion to approve them as submitted?

MR. DOBIAS: So moved.

MR. LEE: Second it.

ROLL CALL

MR. MC GUINNESS	AYE
MR. LEE	AYE
MR. DOBIAS	AYE
MS. RANSOM	AYE

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

MR. MC GUINNESS: So moved.

MR. DOBIAS: Second it.

ROLL CALL

MR. MC GUINNESS	AYE
MR. LEE	AYE
MR. DOBIAS	AYE
MS. RANSOM	AYE

(Whereupon, the board went into closed session.)

(Discussion was held off the record)

January 22, 2008

20

MS. RANSOM: Anything else to come before the board?  
Motion to adjourn.

MR. LEE: So moved.

MR. DOBIAS: Second it.

ROLL CALL

MR. MC GUINNESS	AYE
MR. LEE	AYE
MR. DOBIAS	AYE
MS. RANSOM	AYE

Respectfully Submitted By:

Frances Roth  
Stenographer