

September 17, 2007

1

TOWN OF CORNWALL
ZONING BOARD OF APPEALS

September 17, 2007

MEMBERS PRESENT: LENORA RANSOM, CHAIRPERSON
EILEEN REGAN
TED DOBIAS

ALSO PRESENT: ADAM RODD, ESQ.
ZONING BOARD ATTORNEY

ABSENT: WILLIAM LEE
MICHAEL MC GUINNESS

MS. RANSOM: The September 17, 2007 meeting of the
Cornwall ZBA will now come to order.

JOHN_&_CYNTHIA_LATIMER_-_CONTINUATION

MS. RANSOM: Our first hearing this evening is on the continuation of the request by John and Cynthia Latimer, 19 Sugar Maples Road.

MR. LATIMER: I'm John Latimer, owner of 10 Sugar Maples. Last month I couldn't make the meeting because the plans, the maps that were supposed to be filed, the surveyor hadn't had time to process them for the last meeting so I have them tonight with us. All right, during the July meeting, I was requesting an area variance for a minor subdivision. My property which I'd like to create one lot, the one lot now is my own residence, I live there, I'd like to create it into two lots. That would leave lot 1 being 3.1 acres in gross and lot 2 being 2.55 acres.

MS. RANSOM: Do you have any additional maps?

MR. LATIMER: Just those two, those are the only ones I brought. During last month's meeting there was a question about a Central Hudson easement on the property which was discovered. It did lower the area variance by 6/100 of an acre, brought it down from 1.66 to 1.60, it's, there's one utility pole on the property is what it is Central Hudson.

MR. RODD: That would be for the vacant lot, right?

MR. LATIMER: No, that's for the two homes up on top of the hill, the two homes behind.

MR. RODD: No, I just wanted to, you said it brought it down from 166 to 160?

MR. LATIMER: Yes.

MR. RODD: That's referring to lot 2, correct?

MR. LATIMER: Yes, I'm sorry, yeah, lot 2, right.

MR. RODD: That's the vacant lot?

MR. LATIMER: That's the vacant lot, yes, I thought you meant the pole for that vacant, lot the poles for service for the other two homes.

MS. RANSOM: There's just a pole, there's not a right-of-way?

MR. LATIMER: Well, Central Hudson has a right-of-way, you know, to come in to service the utility line but all I'm saying basically the pole is there but Lanc & Tully when they did the deductions for it, it came out to be .06 in addition to the deductions.

MS. RANSOM: Where on this map is that pole that we're talking about? It's right here?

MS. REGAN: This?

MR. LATIMER: Yes.

MS. RANSOM: And that's on your property?

MR. LATIMER: No, this is all out in the road here on 32.

MS. REGAN: I know but I'm saying there's--

MR. LATIMER: Right, yes, but not on my property, right.

MS. RANSOM: Now I thought there was an easement through that?

MR. LATIMER: Yes, this whole road right here, this is my property line here, both sides of the road and the property runs right up through the middle of my

property here which is why I'm here for a variance because of the deductions caused by this road and the utility poles and the stream and the slopes of the property, see the property is over two acres, it's over 2 1/2 acres even but when you take out for the, you know, private road that services the two homes on top of the hill that deduction and the utility pole brings me down below two acres.

MS. RANSOM: And how much of the lot is wetlands?

MR. LATIMER: That's on here as well .17.

MS. RANSOM: No, .31.

MR. LATIMER: No, that's the stream.

MS. RANSOM: Utility easement is .06 acres.

MS. RANSOM: So the first lot starts at 3.18 acres and we deduct 1.35 for wetlands, the road, the slopes that brings us down to 1.83 and the other one is 2.55 deducting .95 and that brings us down to 1.6.

MR. LATIMER: Yes.

MS. RANSOM: Where two acre zoning is the required. Is there anything else you'd like to add?

MR. LATIMER: Just the fact during last month's meeting that the neighborhood was, had the objection to it, I brought up the fact that it was going to be too small to have a lot to build a home on. So with that I took the list of all the mailings, all the certified mailings that I had to send out for this and I just, you know, pulled up the area sizes for that, here's one, I've got one for everybody with a little breakdown so there was 14 mailings sent out and of the 14, two of them are non-residential ones, Storm King Art Center which is 93 acres and the other one is a New York State

DEC which is the property for the Moodna Creek which is 4.4 acres. All right, I won't read it to you, I know you can read it.

MS. RANSOM: Okay.

MR. LATIMER: Basically what I'm showing here is that my lot is not going to be any different than in fact the two lots that I'm leaving with are larger than most of the 14 lots in the surrounding area.

MS. RANSOM: Okay, Ted, questions?

MR. DOBIAS: No, ma'am.

MR. RODD: This is gross lot area, correct?

MR. LATIMER: It's all gross but all these homes are on my road and the other road so they would have the same deductions as far as slopes, right-of-ways, easements for the utility company, you know, they'd all have the same deductions.

MR. RODD: Just so the record is clear for our purposes, Sugar Maples and Roaring Brook?

MR. LATIMER: Yes.

MR. RODD: With respect to their residences, can you just identify which street they're on as opposed to a post office box?

MR. LATIMER: On the first page the first two are the non-residential, Storm King, so on Nicosia (phonetic) are Sugar Maples, the next one down I'm not sure where they live.

MR. RODD: Hagar.

MR. LATIMER: That's a Highland Falls address. Patrick

Driscoll, again, not sure which house is his, I only have section, block and lot.

MR. RODD: Is it Sugar Maples or Roaring Brook?

MR. LATIMER: Building department gave me a list of all the people that would be affected by this where they live exactly on the back, there's a map as to all the lots, you know, and how they would be touching this property and whatever and with that so I'm not sure, the only people I know are the people on Sugar Maples so there's six houses on my road.

MR. RODD: If you can just identify who are on Sugar Maples?

MR. LATIMER: Romaines (phonetic) are there, Whitney, Badowski (phonetic), Camlet (phonetic), Nicosia (phonetic) and myself, Schult are Roaring Brook and Catherine Elicks (phonetic) lot is 1.9 acres which is already listed and that's gross, not, I don't know what the net would be on that property and the Schult property is 4.2.

MS. RANSOM: Do we know any of the people on the second page where the lots may be?

MR. LATIMER: If we go to the map, you can look at the map with the section, block and lot and you can see where they are in relationship, I don't know if there's houses on them or if they're all just land.

MS. RANSOM: Eileen, questions?

MS. REGAN: No.

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

MS. SCHULT: Yes, I would.

MS. RANSOM: Can we please have your name and address?

MS. SCHULT: My name is Helen Schult, I reside on the top of Roaring Brook Road number 15 and I would like to address the fact that we were requested at previous meetings that there be a witnessed perc test because on the maps that we received it was an unwitnessed perc test and that's what a lot of the decisions were based on was an unwitnessed perc test. Also, as far as procedure goes, we were not allowed any copies of the map that have been presented before this board at this very late time. We have not had time to review those and to have our consultants review those as well. So I feel there's been inappropriate procedure going on now. I would also like to address the fact that the private road issue and road agreement has not been solved. So I have three points of interest, unwitnessed perc test, improper procedure and the fact that the private road issue has not been resolved. Thank you.

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

MR. LATIMER: Can I rebuttal? As far as the witnessed perc tests goes, that's something that's done with the Planning Board's stages, okay, they did come out, Lanc and Tully's come out and done perc tests, they came out and they recommended that we put a curtain drain around the property to increase, there's some water problems, you know, excess water, so they want to put a curtain drain around where the septic field is going to go. So once that's installed which the planning board has authorized me to go ahead and do but I didn't do it until I had the zoning process finished. Then the town would be invited out for the witnessed perc test. We're not hiding anything and obviously, they are not going to grant me any approvals without a witnessed perc test. As far as the private road issue not being solved, it was solved, it was solved during the

planning board stages, the town's attorney's office I believe had several questions about it. My attorney's been in contact with them and I do have every legal right to drive on my property.

MS. SCHULT: We have not received notification of that.

MR. LATIMER: They were present at the meeting when that was brought up so--

MS. SCHULT: We have not received written notification of that.

MS. RANSOM: Okay.

MR. LATIMER: I'm curious who your consultant are. I will have Lanc & Tully send whatever maps over to the consultants.

MS. RANSOM: I can't speak for the rest of the board but since we have just received these maps I feel we probably should leave this open for another month to give the board members as well as the public a chance to review the maps, since this is our first opportunity as well. So is there anything else at this point, Mr. Latimer, you'd like to add?

MR. LATIMER: Well, I mean, I was going over some of the pros and cons of the development if I could. It's a minor subdivision, all right, the pros for one additional home, there will be no additional driveway going onto Route 32, it's going to use the existing road which is on my property. The home, you know, when it will generate more tax for the town, all right, so be another house, right, more taxes for the town. That's a good thing. I guess it will provide a financial relief for me because I will be reducing my land area so my tax will be reduced based on the less amount of property I have and that property that is south of the stream I can't access it from my property

anyway because of the stream. I'm not going to go across the stream with my kids, you know, so the property is useless to me. So no sense in me holding onto it and paying taxes on it.

MS. RANSOM: Okay, you wanted to say something?

MS. SCHULT: When Mr. Latimer purchased that property, he did say here at a meeting that he was aware of the zoning board, the zoning regulations related to that property. Again, I'm sorry for his hardship, then he shouldn't of bought a house in Cornwall and pay massive taxes, but on the other hand again he's trying to squeeze in a house to a lot variance now that's greater than 12,000 square feet, 1.6 I believe is probably one of the smallest variances that will be allowed in that area. And as for his right to that road, again, we have not received any written correspondence to that fact nor has Mr. Latimer ever picked up a phone and spoken to either myself or Mark about any kind of road maintenance agreement he's had.

MS. RANSOM: Road maintenance agreement is beyond this board's responsibility.

MS. SCHULT: I'd like to emphasize again the shrinking of the lot size, okay, and we get another witnessed perc test and that area has to be expanded, I think that needs to be considered, there's federal wetlands down there and that's certified.

MS. RANSOM: Thank you.

MR. LATIMER: And the deduction has been taken out for the wetland, you know, it's all documented there. And again as far as the lot size goes, it is still going to be one of the larger lots in the area surrounding the other 14 lots.

MS. RANSOM: Okay, so I think we'll leave this public

hearing open until our next meeting which is on October 15. Now, the building department is going to need a copy of this map and I guess the rest of the board can share the ones that we have.

MR. LATIMER: The guy from Lanc & Tully is away on his honeymoon, he's not coming back until Wednesday, that's why this wasn't presented right but he will be here Wednesday but October 15 I'll be away, I'll be in Wyoming, actually.

MS. RANSOM: Are you going to have a representative or do you want it held over until November?

MR. LATIMER: Hold it over until November cause I'd really like to be here.

MS. RANSOM: Can you contact the building department and let them know that you're requesting this be held over until November?

MS. REGAN: I do have a request too, can you identify on this map page the neighbors that you're referring to, not now, when you come back mark them and who's what?

MR. LATIMER: Yeah, cause I gave the section, block and lot on each one.

MS. RANSOM: It's kind of small, we can't read the section, block and lot.

MS. REGAN: If you don't mind identifying them, marking it, thank you.

MR. LATIMER: That's it.

MS. RANSOM: So if you can submit the new map to the building department as well as what Eileen has requested as far as who owns which properties then and

September 17, 2007

11

then also your request to hold this over until
November.

MR. LATIMER: No problem, thank you.

COLIN_REGINA_ & MICHELLE_DIMARCO

MS. RANSOM: Next public hearing is on the request of Colin Regina and Michele DiMarco. 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 Town Hall, 183 Main Street, Cornwall, New York on September 17, 2007 at 7:30 p.m. or soon thereafter as the matter can be heard on the application of Colin Regina and Michelle DiMarco relating to property located at 156 Angola Road and designated on the tax map as section 30, block 2, lot 5.2. The applicant seeks an area variance to Section 158-21 (k) (1) of the zoning ordinance in order to install a 20 foot by 40 foot mountain lake inground pool with insufficient rear yard area. The ordinance requires 20 feet and the applicant proposes 12. In addition, applicants also seek a variance to Section 158-12 Part 1 SLR district, use group B, column number 6 of the zoning ordinance to allow a minimum side yard of 20 feet where 30 feet is required. The zoning board will at the 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: August 30, 2007. By Order of the Zoning Board of Appeals, Town of Cornwall, Lenora Ransom, Chairperson. Mr. Regina?

MR. REGINA: Yes.

MS. RANSOM: Would you make your presentation to the board, please?

MR. REGINA: Well, basically, the setbacks are 20 and 30, we were looking to push it back to the side lines. The way the zoning is we were, when we built we had a one acre lot, it's now 2 acre lot. Our septic is in the front yard and our side yard on the other side of the property is on the county road so the setbacks there are 50, so the back yard is really the only place

for the pool and the size of the pool we wanted doesn't quite fit in there.

MS. RANSOM: Can you tell us what a mountain pool is?

MR. REGINA: It's on the drawing but it's just shaped like--

MS. RANSOM: It's the shape?

MR. REGINA: Yes, it's the shape.

MS. RANSOM: I assume that Raymond and Marie DiMarco are related to you?

MR. REGINA: Yes, that's my father-in-law.

MS. RANSOM: They seem to be the most impacted by your pool, I mean, their front yard overlooks your pool.

MR. REGINA: Yes.

MS. RANSOM: Is that an issue with them?

MR. REGINA: With the landscaping and with the keeping of the stone walls on the property that was part of the design of the pool, so it would minimize any changes to the area so they wouldn't actually see it. And we're in a pocket in our back yard where it actually slopes up to their house so the pool is actually lower than the property so they actually wouldn't even see it.

MS. RANSOM: What kind of landscaping are you talking about doing?

MR. REGINA: Similar to the front of our home where we have 12 foot pines across the front so on the side yard we're going to do something similar so you wouldn't see anything from the road except the trees.

MS. RANSOM: So along the side yard where the DiMarco's house is up here overlooking your back yard you're going to put a row of spruces?

MR. REGINA: The fencing goes around the side yard which mirrors the stone walls that border our property, my in-laws and Jones Farm so we were going to carry that through around to the side so the stone walls would look very similar and then the trees would border those stone walls.

MR. RODD: The landscaping that you're proposing it's not specifically indicated on your survey.

MR. REGINA: It's not specifically on there.

MS. RANSOM: Okay, does Jones Farm border your property at all?

MR. REGINA: The back of my property, the other side of the stone wall.

MS. RANSOM: That's the Jones Farm?

MR. REGINA: Yes.

MS. RANSOM: Then the lands of Marie Caskey are on the side of your home.

MR. REGINA: Yes, my property, her home is down in this corner and Jones Farm is behind my house.

MS. RANSOM: Can you tell us what natural vegetation there is behind your house between your home and Jones Farm, please?

MR. REGINA: Yes, poison ivy mostly, we built the home just under three years ago and they have been cleaning poison ivy for the last 2 1/2 years.

MS. RANSOM: Are there any mature trees in the back of your house?

MR. REGINA: There's one and that one is due to come down this spring, it's actually dying.

MS. RANSOM: So what's between you and the orchard, nothing?

MR. REGINA: A stone wall, the property markers and so there's stone walls all the way to the corner of the property around the front of my property all the way across my in-law's property around the side of their property which is adjacent to Cromwell Manor and all the way up to the corner. So we're covered by stone walls on all four sides.

MS. RANSOM: And the poison ivy's growing all over the stone wall?

MR. REGINA: It's huge, size of the vines are like this (indicating).

MS. RANSOM: Any questions?

MR. DOBIAS: No.

MS. REGAN: No.

MR. DOBIAS: You talked to me about a retaining wall you're going to put up?

MR. REGINA: Yeah because we're in a pocket, the water will come down the hill so we have to have some drainage in order to protect from being flooded so that back pocket there where we're looking to do the setbacks further would be a retaining wall with drainage.

MS. RANSOM: Is there anyplace else in your back yard?

MR. REGINA: Actually, we have less and less as we go, I don't know if it shows the orientation of the house, when they built it we're, it's supposed to be 40 feet off the setbacks and we're 40 feet and seven inches so there was no way to orientate the house anywhere else, so as we go down the property line we have less and less. My driveway is actually on the other side and then we're closer to the county road which it now increases to 50 feet off the county road on that side of the property and then we're exposed to all of Angola Road at that point.

MS. RANSOM: So there's no way to move this closer to the house?

MR. REGINA: They gave me a 10 foot setback off the house, that's what Gary told me according to the code so we started at 12 off the house and that's why we even inched further towards the property line so he said if I was one inch either way so we took, I really only needed and extra 4 feet but he said that, you know, when they dig the hole and they move it if they find rocks you have to make a bigger variance, otherwise if I go more for one variance and they put the pool in because of the orientation he said make it a larger percentage.

MS. REGAN: That makes sense.

MR. RODD: Is the whirlpool on the survey is that going to be attached to the pool or is that separate?

MR. REGINA: It's a spillover, it's called a spillover spa, just pours into the pool so they're interconnected.

MS. RANSOM: So it's not separate, it's just a little jut out on the pool?

MR. REGINA: Yes.

MS. RANSOM: And is that part of the reason that you need this much of a variance or is the pool--

MR. REGINA: No, it's the pool itself, that top corner there.

MS. RANSOM: Now, the outbuilding that's going to be part of the pool equipment shed, that does not need any variances?

MR. REGINA: No, none, it's under 15 feet and it's 10 x 20 so Gary said it was in the guidelines and it's behind the house so--

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

MS. SUMPTER: I have a question. I live down the road, Mr. Regina sent me a letter, that's why I'm here.

MS. RANSOM: Could we get your name and address for the record?

MS. SUMPTER: Elaine Sumpter, 2 Timberline Drive, Cornwall, New York. I don't seem to understand it's a difference of 8 feet on one side which is the ordinance requires 20 and the applicant has 12, difference of 8 feet on that side and then the other one is a difference of 10 feet. So I know where his house is situated, kind of like at an angle, where do you propose to put the pool, on the side by your father-in-law's house?

MR. REGINA: Yes.

MS. RANSOM: Okay, anything else? Are you okay?

MS. SUMPTER: Yeah, yeah, he showed me.

MS. RANSOM: Any questions?

MS. SUMPTER: Well, he showed me where it was going to be, I couldn't envision it, I know his house from the side and front cause I live on Timberline, I live closer to town than he does and where he proposes to put it he's just going to have less place to walk.

MS. RANSOM: Okay, you don't have a problem?

MS. SUMPTER: I don't have a problem with it if he doesn't have a problem with it.

MS. RANSOM: Thank you very much for your comments. Mr. Regina, is there anything else you'd like to add?

MR. REGINA: No.

MS. RANSOM: Any other questions up here?

MR. DOBIAS: No.

MS. RANSOM: Okay, let the record show that we have received the information from the county and they have left it for local determination. So we may make a decision tonight, you're welcome to hang around if you choose, otherwise, we'll call the building department tomorrow.

REGULAR_MEETING _____

APPROVAL_OF_AUGUST_28,_2007_MINUTES _____

MS. RANSOM: Okay, the minutes of the August 28 meeting have been distributed, are there any additions or corrections?

MS. REGAN: No.

MS. RANSOM: Do I have a motion to approve the minutes as submitted?

MS. REGAN: So moved.

MR. DOBIAS: Second it.

ROLL CALL

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

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

MS. REGAN: So moved.

MR. DOBIAS: Second it.

ROLL CALL

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

(Whereupon, the board went into closed session.)

(Discussion was held off the record)

September 17, 2007

20

LATIMER_-_DECISION

_____ - _____

MS. RANSOM: We're going to leave the public hearing for John and Cynthia Latimar open at least until October.

REGINA_&_DIMARCO_-_DECISION _____

MS. RANSOM: Our next public hearing this evening was on the request of Colin Regina and Michelle DiMarco, 156 Angola Road seeking area variances to install a 20 x 40 foot pool, the ordinance requires 20 foot and the applicant proposes 12 for rear yard, side yard is 20, proposed 30 required. So why don't 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: I don't think so.

MS. RANSOM: No and as he said, the one person that would be most affected is the DiMarcos and because of the slope of the land it would be very difficult to see the pool. Can the benefits sought by the applicant be achieved by some method feasible for the applicant other than an area variance?

MS. REGAN: No because of the house location and the leach fields and everything else it's limited.

MS. RANSOM: And he testified that he had to be a distance away from his primary residence and in order to do that again he would need to have a variance. Is the requested variance substantial? We're talking about 8 feet on the rear and talking about 10 feet on the side.

MS. REGAN: Not really.

MR. DOBIAS: No.

MS. RANSOM: Since it doesn't have an undesirable change in the character of the neighborhood, it's not really deemed substantial. Will the proposed variance

have an adverse affect or impact on the physical or environmental conditions in the neighborhood or the district?

MS. REGAN: No.

MR. DOBIAS: No.

MS. RANSOM: No, the pools are common in the neighborhoods. Is the applicant's alleged difficulty in complying with applicable zoning self-created?

MS. REGAN: Yes.

MS. RANSOM: Yes, of course the way the house is situated on the property.

MS. REGAN: There's not much choice.

MS. RANSOM: Let the record show that we did receive County Planning and they have left it for local determination. So are we ready to take a vote? Do I have a motion that this is a Type 2 Action under SEQRA?

MS. REGAN: So moved.

MR. DOBIAS: Second it.

ROLL CALL

MS. REGAN AYE

MR. DOBIAS AYE

MS. RANSOM AYE

MS. RANSOM: Do I have a motion to approve the area variances requested by Colin Regina and Michelle DiMarco for property located at 156 Angola Road?

MS. REGAN: So moved.

MR. DOBIAS: Second it.

ROLL CALL

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

MS. RANSOM: We'll let the building department know.

MR. REGINA: Thank you.

MS. RANSOM: Motion to adjourn?

MS. REGAN: So moved.

MR. DOBIAS: Second it

ROLL CALL

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

Respectfully Submitted By:

Frances Roth
Stenographer