

The Deerpark Zoning Board of Appeals met for a continuation of a public hearing for the application of Carol Medora on Thursday, December 20, 2007 at 7:30 p.m. at Deerpark Town Building #2, Route 209, Huguenot, N.Y. The following members were present:

#### ZBA MEMBERS

Martin D. Smith, Jr. - Chairman  
Frank Bigger  
Gerald Cedrone  
Jane Lord  
Karl Brabenec

#### OTHERS

Mr. Glen A. Plotsky, Town Attorney  
Mr. Robert Emerson, Town Building Inspector  
Mr. Bernard Kozykowski, Architect  
Mr. James Harrington, Adjoiner  
Mrs. Donna Harrington, Adjoiner

The secretary read the public hearing notice, "Notice is hereby given of a Public Hearing to be held by the Zoning Board of Appeals of the Town of Deerpark, Orange County, New York, pursuant to Article 9 of the Town of Deerpark Zoning Law on the application of Carol Medora for a variance for road frontage and driveway accessibility use. The application effects the following premises: Record Owner: Carol Medora; Tax Map Designation: Section 9, Block , Lot 6.2; Zone Designation: Hamlet Mixed Use; Located on Route 209, Cuddebackville, Town of Deerpark, Orange County, New York. Information on this application is on file with the ZBA Clerk, Town Building #2, Route 209, Huguenot, New York. The Hearing shall take place at 7:30 o'clock P.M. on the 15th day of November 2007 at Deerpark Town Building #2, located on Route 209, Town of Deerpark, Orange County, New York, or as soon thereafter as practicable. All parties wishing to be heard shall be heard at that time.?"

Martin Smith  
Okay, you're up Bernie.

Bernard Kozykowski

Good evening, my name is Bernard Kozykowski, architect and representative for the Carol Medora application. What I'd like to address, if I may, is the issue of access to Route 209. And there has been quite a bit of time spent looking at that. And our last communication with the Department of Transportation, and with a confirming letter from my office, indicates that as long as there are four or fewer residences, using the access drive onto Route 209, New York State DOT has no interest in the project. With the only exception being, if there is work performed within the New York State DOT right-of-way, the proper permits would have to be applied for. And what they're doing in establishing that, is, they're conforming to standards that are provided by ASTO, and it all relates to the amount of trips that you would expect on Route 209. To the amount of trips on the road and the speed on the road itself. It's a 55 mph speed limit, which is very much a player in this. In conjunction with the number of people that would be expected to come out onto Route 209. Statistically, when you have, if I'm reading the ASTO standards correctly, if you have four or fewer residences, the numbers are relatively insignificant. I mean, they occur, but they don't represent a high figure of residents. And the reason that we are asking for access at one point on Route 209, is because of difficulties of providing other access points to the highway, and a conflict, another reason why we're here, with the Town Zoning Ordinance which only permits two residences to use an unapproved driveway. We certainly suggest and submit to the Zoning Board of Appeals that two is a bit tight under any circumstances. I think that fair testimony throughout, is the fact that ASTO and NYSDOT are willing to understand entertain four, which is why we are here.

We have reasonable cause to allow the applicant to permit the three lot subdivision off of a private driveway off of Route 209. So, you would have lot #1, lot #2, and lot #3. The existing lot which was previously subdivided off of the property, uses that same point of access onto Route 209. The other issue is the question of road frontage which was raised at the Planning Board. And Glen (Plotsky), if you may assist me, if you will. Looking at the Ordinance, I was looking for something that specifically addressed frontage of 200'. There's 200' average width, but I seem to have difficulty in acquiring anything in specific language in the the Ordinance that says you have to have 200' of frontage, per se.

Glen Plotsky:

Unfortunately, I don't have my Zoning Ordinance with me.

Bernard Kozykowski

I have mine.

Glen Plotsky

All right.

Bernard Kozykowski

Incidentally, this survey map here is a survey map from the professional, land surveyor. This is the plan that we prepared for the Planning Board as well, which mirrors this one, with the exception of a couple of clarifications that were forwarded to the Planning Board. In fact, we've gone a long way in investigated options that we've had otherwise, and other extreme entrance points on the roadway, which are workable. And the easement down here with the Harrington property is very narrow. It's awkward and in a bad position, no matter how you look at it.

Glen Plotsky

For some reason I believe it's tied in, in some fashion, to the front with the lot width. This also provides that the minimum average lot width is supposed to be 200', whether or not it's with or without road frontage. And as I said, I believe that's how they tie it in. That talks about lot width, as opposed to road frontage. Under the supplementary regs there's a statement of 200' of frontage...

Martin Smith

We've dealt with this 200' of frontage before.

Bernard Kozykowski

I've encountered this in a peculiar application relative to cul-de-sacs and the setbacks of the residences. And where that rule is tended to be applied when you're working with cul-de-sacs. And what that does is it sets the residence back from the cul-de-sac. I've never encountered anything where you have a specific frontage requirement. Not to say it might not be done, but I just haven't found anything in the Law. And that extension, by the way, if you take a look at the private drive, the length is more than sufficient to meet that 200' minimum.

Glen Plotsky

The private drive doesn't provide the frontage, as a general rule.

Martin Smith

The frontage is on a public road.

Bernard Kozykowski

I think certainly the ZBA has spent a fair amount of time looking at this project over the past 4 or 5 years. And from many different points of view, Mr. Harrington's point of view of course, and what

we feel what we've been able to provide here with the careful scrutiny of NYSDOT is a reasonably acceptable solution to the problem. Obviously not exceeding 4 lots, where 4 lots is acceptable by other standards, and this is why we bring this before the Board.

Martin Smith

Is the house in the back occupied right now?

Bernard Kozykowski

Yes. And the front house is not occupied. And they're working on the front house, and this here would be the fourth lot.

Glen Plotsky

Is the lot in the back included in these four?

Bernard Kozykowski

Yes, absolutely.

Mrs. Harrington

The house that's on Route 209 is...

Bernard Kozykowski

That's one of the four. Yes. That's only because it uses the same point of access on the highway. And I'll tell you when DOT looked at it, Kim (Hankin) looked at it very closely.

Glen Plotsky

Bernie, I can't put my hands on it right now. I'll have to look into that and get back to you.

Bernard Kozykowski

Again, if the Board would grant that request to permit use of the private drive by 4 dwellings, rather than two, that would probably alleviate that concern anyway.

Glen Plotsky

Say that again?

Bernard Kozykowski

If this Board grants the request to be able to use the private drive for four rather than two dwellings, there would be no concern over the 200' issue, because that would be satisfied by the size of the lots. So, that would be a moot point.

Martin Smith

Could you spell out all of the variances that you are looking for?

Bernard Kozykowski

There are two things that we've brought before the Board for variances. One, we're clear as to the need, and that's the ability for us to have four lots using the private drive as opposed to the two, that are provided for in your Zoning Ordinance. The other thing was the issue that was raised before the Board, and perhaps is a moot point, would've been having less than 200' of frontage on Route 209. And everything that we've been able to do on our detailed research now, seems to reveal that rather than that being an issue of concern, it's a moot point. Not only a moot point, but it's not even in the Ordinance, as far as we can tell. And even if it were in the Ordinance, it would still be a moot point, and still not mean

anything...

Martin Smith

The back lot doesn't have any frontage.

Bernard Kozykowski

True, the back lot doesn't have any frontage. This is part of where we're coming from, with respect to it. The 200' issue is typically an issue of lot width. That's why we found it rather befuddling. The only time I've seen that is when you have a cul-de-sac, and that respects the placement of the dwelling, rather than the frontage.

Martin Smith

The length of the private...

Bernard Kozykowski

The length of the cul-de-sac is what is permitted in the Zoning Ordinance, it's under 800'. Previously the Zoning Ordinance had a 400' limit, and we believe that to have been a typographical error. When the Ordinance was re-drafted Dennis, that was made to be 800', which is still small by any contemporary standards for subdivision planning. We've had cul-de-sacs anywhere from 1,200' to 1,600' in length. But fortunately, we're able to conform to that restriction, and that's respecting the Zoning Ordinance that says no more than 800'.

Martin Smith

Now you're proposing to improve that to town standards, that driveway?

Bernard Kozykowski

No, in fact one of the things that was requested by the Board, I believe, was being able to provide you with a comparative of the difference between the costs of an unimproved private driveway as opposed to...I'll tell you the numbers are rather staggering when you take a look at it. And this is an issue of cost effectiveness in...you know the ratio, depending on how far you go into the sub base, it's a minimum of 6 times more expensive to provide what would be a minimum town spec road. By the way, I did contact the town highway department to get clarity on the issue, and I really wasn't able to get anything specific. So, what I did, was I went into the typical public road references to get the different classifications for roads, and that's where I came up with the 6 to 1 minimum. It could be as much as an 18 to 1 ratio in terms of cost. Right now, you're talking that it cost per foot of a private drive of maybe \$15.00 to \$16.00 per foot, which in itself gets pretty pricey. And if you do what is considered a 20 year town spec road, you want to be able to have that road there for 20 years without a high degree of maintenance, you're talking \$96.84 a foot of construction. Of course, I apologize for the pennies, you could round it off to \$100.00. But the point is, is that it is cost prohibitive in small terms in small subdivisions. And I think perhaps, this is also why, if you take a look in the Subdivision Law in most zoning ordinances, what they do is, they provide separate issues with respect to minor subdivisions and major subdivisions.

Glen Plotsky

Bernie, could you focus please on the Deerpark Zoning Law. What other municipalities do is totally irrelevant for this Board, or any other...in other words, it's interesting for informational purposes, but the question is, is this driveway going to be town specs or not. And if not, how do you justify that? I just don't want there to be confusion about what you're talking about other towns' ordinances and what you should be talking about.

Martin Smith

Does the Board have any questions?

Glen Plotsky

It seems to me that if he's asking for 4 lots off of a private drive, that should be a variance to the road requirement, which is something he should be asking for, although I don't know that he is.

Bernard Kozykowski

That was included with the appeal.

Martin Smith

Do you have any questions Frank or Karl?

Frank Bigger

Yeah, Bernie we asked you to get a letter from Ms. Hankin, and so far I don't see it in here yet. I see your letter to her, but there's no response back from her. And all the other letters you have attached to it, pertain to a different site.

Bernard Kozykowski

Frank, if I recall correctly. At the time I was concerned about being able to facilitate that, because the State system tends to be slow in generating such things. And you've worked with the system, so you know where I'm coming from. I believe at that point the Board said that if I were able to provide the Board with a copy of my communication to Ms. Hankin, confirming our conversation. It's easier to talk to them a lot quicker, which I've done, and the Board has that communication. I've got a copy of that. And beyond that, I certainly...if I were to give you a false statement, I would be perjuring myself. I wouldn't do that.

Frank Bigger

So, we don't know what they've said, back to us. We need to know exactly what the State says.

Bernard Kozykowski

I've spoken to Kim to confirm the receipt of my letter, and she did acknowledge it verbally. And she offered to provide such communication, but there was no stipulation in that point in time as to how long she would get that back to us.

Frank Bigger

And the other thing is, all of the other letters elude to a different site for the driveway.

Bernard Kozykowski

They're all addressing this area here on Route 209, from the Harrington parcel all along the curve here. I believe one of them might have gone along here and talked about the Mason property as well, which really gets to be a tricky area on that turn. You know that area very well. And everything there is specific to this site, to this property line of the Medora parcel as it fronts on Route 209.

Frank Bigger

I realize that, but again, what we're talking about is a different driveway being brought out onto Route 209..

Bernard Kozykowski

We're going to use the existing driveway, we're not proposing a different driveway. We want to use the existing entrance onto Route 209.

Frank Bigger

From the other letters here...from Mr. Harringtons' property?

Mr. Harrington

The existing driveway there, he's talking about the driveway that's already there. There's no proposal to change that. That's what it's really all about.

Martin Smith

You have the road, it looks like, subdivided off. Who will own the road?

Bernard Kozykowski

That will be owned jointly. There's a maintenance agreement the Zoning Ordinance provides for such a mechanism and we have that drafted for the Planning Board.

Martin Smith

Anybody else have any questions or anything? Are there any comments from the public? Okay, state your name for the record?

James Harrington

My property is directly north over here. The gentleman is talking about this driveway here, that's been in existence for very long. Personally, I think it's the only thing he can do. It would've saved them some money, if they had pursued it this way a couple of years ago. Because of the curve and the way that the property lays, that's the only viable way to get into this property. My only two things with this is, the road does need some sort of reclamation. Secondly, if it's only supposed to be four lots, you have another easement coming in here, up to Sullivan County, why is that there if it's only going to be four lots? If that easement is there, what stops you from coming back in the future and saying, well we want it over here too?

Bernard Kozykowski

If that were to happen....we actually brought this before the Planning Board respecting some concerns that were expressed by that Board with regard to the larger parcel in Sullivan County. We had put that on there to indicate that if that were an issue that should be addressed. And at this juncture, it doesn't look like one that we will address, the final submission to the Planning Board will have that removed, it will not be there. The Sullivan County parcel is a separate parcel of property, and

James Harrington

What makes it stay that way?

Bernard Kozykowski

I'm not sure there's a good answer for that?

James Harrington

Why can't someone come back in ten years and say that we want to go now?

Glen Plotsky

The applicants would have to go back before the Planning Board.

Bernard Kozykowski

That's the right answer. In fact, what we were trying to do was to develop a mechanism that they actually had to come back before the Planning Board, respecting the Town Ordinance.

James Harrington

Is the easement on that 50', which means that's another road? And the other thing is, that the existing driveway does need some work. I think it's the only real viable way to get in off this property. It's in the middle of the turn, rather than at one end or the other. It's in the middle of everything, it's only affecting their property, it's not affecting anyone else's property.

Bernard Kozykowski

And the other thing is the use of the driveway. It's a private driveway, not a town road.

Donna Harrington

Could I just say something?

Glen Plotsky

What's your name ma'am?

Donna Harrington

I'm sorry, Donna Harrington. With the County change overs, and the crossing of lines, I understand after speaking with Mrs. Medora, and I could be wrong, was that all of their property is in Sullivan County.

Bernard Kozykowski

No, no, no.

Donna Harrington

That's what she told me.

Bernard Kozykowski

I think you're living with the same issue yourself on your property, because of the recent recertification of the boundary. And one of the problems that we're dealing with there, is the monumenting, which hasn't been completed yet. George Fultons' office and Lanc and Tullys' office were at odds with the County and how to resolve that and the process. And before that can be finalized, I'm sure any title company, the way they would want it, they would want to know, in the final description of the lots, that they do respect this new boundary.

James Harrington

They decided that I don't have as much acreage that I used to have.

Martin Smith

Does that Sullivan County piece then have any access?

James Harrington

No.

Martin Smith

Is that proper to create a landlocked piece of land? I was under the impression that the Planning Board didn't let you do that, but I guess I could be mistaken.

Glen Plotsky

But then that becomes a Planning Board issue.

Bernard Kozykowski

And it's not creating a non-conforming use, it's a different kind of an enigma.

Glen Plotsky

Just so the Board is aware, it's really an interpretation/ variance. The question is, how many lots are allowed to access a private drive, this is the first question. And how do you define access? Now, initially there was a discussion that if the lots just touched it, it counted. And that was an interpretation question. Now these lots are going to definitively access the drive, so it's not really an interpretation question in that context. We know that there's going to be four lots using that driveway. In the earlier application, the neighbor was strongly opposing it, now apparently that opposition has been withdrawn. The real question, I think, at this point is, does this Board grant the variance with regard to four lots being able to access one private drive. And as part of that, I guess, what standards, if any, does this Board feel would be applied relative to the construction of that private drive? In other words, to the extent that the Town eliminated private roads, there's really no private road specs, but there are town road specs and private drive specs. And the question is, do you require the applicant to build to those town specifications or do you have some other specifications,...that I guess, Mr. Kozykowski is presenting, just as a more generic private drive, lower cost drive. And as part of that, I guess Mr. Harrington's question, which is how do you insure that that drive gets upgraded to a point where it's sufficient to handle the four houses or whatever. With regard to the easement going to the back to Sullivan County, that's an issue for the Planning Board to address in terms of permitting the creation of a landlocked parcel and as far as Mr. Harrington's question, which was how do you have somebody coming back,... well they have to come back to the Board to get that permission. They have to go to the Mamakating Planning Board to get permission to subdivide the property, in fact the only access is going to go through this lot and they'll have to go to NYSDOT and the Planning Board to be able to have more than 4 lots access that drive. I guess at that point, it would be a question of having a town road. There too, they could ask to just build one house in Sullivan County, with access through that easement, and I suppose they could come back to this board, and say, we have four and we'd like to have five. NYSDOT says yes or no, or whatever it's going to be. But it's certainly a subject that the Board would have to review before it may be granted.

James Harrington

Are residents informed of such issues?

Martin Smith

Usually if they're close to the line, we advise them that we're doing something.

Glen Plotsky

Well, there's a public hearing notice that goes out to the adjoining, and the municipality has to be notified, that is, within 300' for the ZBA and 200' for the Planning Board. Now, with regard to this particular application, the Town of Mamakating gets notified for both Boards.

James Harrington

The notification is that an action is going to take place?

Martin Smith

Yes.

James Harrington

Does it say what that action is?

Glen Plotsky

It does say that it's a 4 lot subdivision that is being proposed.

James Harrington

But it doesn't say that they're landlocking your parcel, therefore, this guy here could ask for a tax break... so that communication is not done? Right?

Glen Plotsky

Unless that Town actually contacted the Town of Deerpark, or investigated. They have a right, just like any other member of the public that receives a public hearing notice to come in and check out the file. There's no more specific access, except, I should say, where there's a significant SEQRA issue, where there's interested and involved agencies, then generally any adjoining municipality would be identified as an interested agency. And interested agency receives all the documentation that the lead agency gets. An involved agency requires basically they have some approval aspect as to what they do, and if they say to the lead agency, "you do this?", it's really got to be looked at. As opposed to an interested agency, which is really like another member of the public, they're just singled out in terms of the informational stuff.

James Harrington

Not only have we established what we've done here tonight, with their boundary. They could have the same meeting in Sullivan County, and they could say here's the right-of-way into the Town of Deerpark, and they don't have to be notified.

Oh, they might notify you, but you're not notified...it doesn't give a detailed description of what's going on, what the road is, to send somebody over there. Now, we're not talking next year, 5, 6 years and a lot of these Board members might not be here then and new members won't know what happened here tonight.

Glen Plotsky

I think that you would get that kind of information in this particular situation, if they intended to use the access through these properties, because at that point they have to show the easement and the road issue. I think that we agree that as a general rule, the notification...not even at the filing of the application, would be at least 10 days prior to a public hearing. Saying, there's a public hearing and it says generally what it's about.

Bernard Kozykowski

Incidentally, the Town of Mamakating did receive notification on the November meeting and a green card came back from them.

Martin Smith

Okay, anybody else have anything?

Donna Harrington

I just want to stress how important the driveway is. I'm the one that in the winter calls the highway department to come out and salt the road and everything, because the water flows down and any ice or anything just sits right there. And we've had lots of accidents, and we almost had a school bus accident a few years ago. A truck was coming along the road and lost it in the curve, and almost took out a kid waiting for a bus. It really needs to be addressed. That's how important this is.

Frank Bigger

Motion to close the hearing.

Karl Brabenec

Second.

Martin Smith

Okay, motion to close the hearing, and second. Jerry?

Gerald Cedrone

Aye.

Martin Smith

Aye.

Jane Lord

Aye.

Frank Bigger

Aye.

Karl Brabenec

Aye.

Motion carried.

Public hearing closed at 8:40 p.m.

Respectfully submitted,

Barbara Brollier, Secretary