

From: Jennifer Thompson
To: Jean Fraser
Date: 5/20/2014 9:50 AM
Subject: Re: 97 Cumberland Ave - RTI/Access Easments

In thinking further about this - I think I'd advise including as a condition of approval a letter from an attorney or some other form of title opinion that opines that the right of way will not be overburdened. I'd hate to have this pursued privately in a civil case and have a judge determine that it was not reasonably foreseeable at the time that a multifamily unit would be built and benefit from the right of way. A legal opinion on which the Board could rely would make me more comfortable in that regard.

>>> Jennifer Thompson 5/18/2014 5:26 PM >>>

Hi Jean - I find no language in the these deeds that purports to limit the scope of the right-of-way or condition it on the presence of only a single family home. Rather, the plain language of the deed from Edwards to Dugas is that the Lot 3 is benefited by "a right of way over, along and upon said lot numbered one (1) . . . easterly of and adjacent to the premises."

Although the law recognizes that a right of way or easement can be overburdened ("Overburdening may occur when the present use of the easement changes from past practices and the change manifests itself in some greater independent burden on the servient estate that unreasonably or unforeseeably interferes with the landowner's enjoyment"), that would be an issue for these property owners to resolve privately.

As for the question about shared access, the right of way granted here benefits lot 3 and burdens lot 1. It looks to me like it would stop at Lot 2. If the house at the rear is on lot 3, then yes. The occupants of that house would presumably be entitled to use the right of way.