

**Town of Danby
Board of Zoning Appeals
Public Hearing Minutes
June 29, 2010**

Members Present:

Al Becker
Allen Wagner
Christine Decker
Gary Borst
Nancy Medsker

Others Present:

Pamela Goddard Town Clerk/BZA secretary
Susan Beeners Code Enforcement Officer

Members of the Public:

Joel Gagnon, Mr. & Mrs. G Smith, Therese Araneo, Pam Kaminsky, John Augustine, Ann Augustine, Randy Ingells, James Reagan, Barry Craddock, Linda Bryan.

The Augustine public hearing was called to order at 7:02pm.

Planning Board Hearing #1, 548 Troy Road:

PUBLIC HEARING to consider a request for variance of the minimum 200-foot frontage requirement provided in Sec. 600, Para. 5 of the Town of Danby Zoning Ordinance in order to subdivide Town of Danby Tax Parcel 4.-1-41, 55.78 acres total, into a 6.5+/- acre lot with 504+/- feet of frontage and containing an existing dwelling, 548 Troy Rd; and a 49.28+/- acre lot with 50 feet of frontage. The Planning Board on June 16, 2010 granted subdivision approval for this proposal subject to the grant of such variance by the Board of Zoning Appeals. Ann V. Augustine, Owner.

John Augustine spoke for himself and his wife Ann. They stated that the current property is “too much for us to handle” and so they wished to subdivide one section. They wish to keep the pond with the current house and expect to put a house on the subdivided 49 acres. There were no other comments from the public.

Members of the BZA asked various questions of the Augustines. There were questions about the amount of setback from the existing garage and the existing building - a pole barn - in the back parcel. Several years ago, the pole barn had been moved from a previous location, nearer the pond, on the property. As an agricultural building, this did not require a building permit. Beeners offered to visit the location to assess the status of this building. Bortz requested that, in the future, a simple form be used to document the agricultural status of a building. This paperwork would be filed in the Code Office. Beeners agreed that this is a good idea.

Adjourn Augustine Public Hearing at 7:13, to open BZA meeting

Motion to Negative Environmental Significance/SEQR:

In the matter of the following:

Request for variance of the minimum 200-foot frontage requirement provided in Sec. 600, Para. 5 of the Town of Danby Zoning Ordinance in order to subdivide Town of Danby Tax Parcel 4.-1-41, 55.78 acres total, into a 6.5+/- acre lot with 504+/- feet of frontage and containing an existing dwelling, 548 Troy Rd; and a 49.28+/- acre lot with 50 feet of frontage. The Planning Board on June 16, 2010 granted subdivision approval for this proposal subject to the grant of such variance by the Board of Zoning

Appeals. Ann V. Augustine, Owner.

The Town of Danby Board of Zoning Appeals, acting as Lead Agency in environmental review of the requested variances, an Unlisted Action, hereby makes a negative determination of environmental significance.

Moved by Alan Wagner, second by Nancy Medsker, the motion passed

Allen Becker	AYE
Gary Bortz	AYE
Christine Decker	AYE
Nancy Medsker	AYE
Alan Wagner	AYE

Discussion:

Beeners clarified the proposed subdivision. One new residential lot would be created from this subdivision. As proposed, there would be no further subdivision of the property. The Planning Board agreed to not putting any restrictions on the property. Any further subdivision would require a BZA hearing for a frontage variance.

Medsker raised general objections to flag lots, and asked whether there was any other way to subdivide the property to provide the frontage required by the existing zoning ordinance. The lines are drawn as proposed due to the layout of existing buildings and a pond. There was a general discussion about the proposed lot and frontage restrictions. The BZA discussed balancing frontage zoning density and acreage, whether this was financial hardship or geometric hardship, and whether there would be an impact on the neighborhood.

Motion to Accept the Variance:

The Board of Zoning Appeals of the Town of Danby accepts the variance on Town of Danby Tax Parcel 4.-1-41as requested.

Moved by Allen Becker, second by Christine Decker, the motion passed

Allen Becker	AYE
Gary Bortz	AYE
Christine Decker	AYE
Nancy Medsker	NAY
Alan Wagner	AYE

The Araneo public hearing was called to order at 7:37pm.

Planning Board Hearing #2, 1311/1313 Coddington Road:

PUBLIC HEARING to consider a request for variance of the minimum 200-foot frontage requirement provided in Sec. 600, Para. 5 of the Town of Danby Zoning Ordinance in order to subdivide Town of Danby Tax Parcel 5.-1-11.1, 18.45 acres total, into a 2.5+/- acre lot with 140 +/- feet of frontage and containing an existing dwelling, 1311 Coddington Rd.; and a 15.9+/- acre lot with 90+/- feet of frontage and containing an existing dwelling, 1313 Coddington Rd. The Planning Board on June 16, 2010 granted subdivision approval for this proposal subject to the grant of such variance by the Board of Zoning Appeals. Therese Araneo, Owner.

Theresa Araneo spoke. A building permit has been granted to renovate an existing barn into a dwelling for a family member. The subdivision is requested in order to sell the lot and dwelling to her daughter. They wish to have homes next door to each other as an extended family. An effort was made to extend the property frontage through purchase of an adjacent property, but were unable to do so. Meeting the frontage requirement with the existing property is not possible due to existing structures and the topography of the land. Araneo maintained that there would be no additional impact to the neighborhood, as both structures already exist.

There is also a request for a side yard variance related to an existing driveway which will be a shared

driveway. The right of way will be granted to the smaller parcel.

Beeners added that a special permit was granted by the Planning Board in 2006 for the second dwelling/barn renovation.

Adjourn Araneo Public Hearing at 7:38, to open BZA meeting

Motion to Negative Environmental Significance/SEQR:

In the matter of the following:

Request for variance of the minimum 200-foot frontage requirement provided in Sec. 600, Para. 5 of the Town of Danby Zoning Ordinance in order to subdivide Town of Danby Tax Parcel 5.-1-11.1, 18.45 acres total, into a 2.5+/- acre lot with 140 +/- feet of frontage and containing an existing dwelling, 1311 Coddington Rd.; and a 15.9+- acre lot with 90+/- feet of frontage and containing an existing dwelling, 1313 Coddington Rd.; and

Further, request for variance of the minimum 50-foot side yard depth in Section 600, Para. 6 of the Zoning Ordinance in order to create a side yard depth of 32 +/- feet from the dwelling at 1311 Coddington Rd. to a proposed property line. The Planning Board on June 16, 2010 granted subdivision approval for this proposal subject to the grant of such variance by the Board of Zoning Appeals. Therese Araneo, Owner.

The Town of Danby Board of Zoning Appeals, acting as Lead Agency in environmental review of the requested variances, an Unlisted Action, hereby makes a negative determination of environmental significance.

Moved by Allen Becker, second by Alan Wagner, the motion passed

Allen Becker	AYE
Gary Bortz	AYE
Christine Decker	AYE
Nancy Medsker	AYE
Alan Wagner	AYE

Discussion:

There was a discussion about the shared driveway and the location of this in relation to the house. Araneo explained that the driveway is situated in this location due to a ravine on the property. An alternate location for the driveway is not practical. The right of way will be a permanent easement on the property in question. In general, a shared driveway (in this case) was seen as positive in relation to soil and water disturbance and traffic mitigation. Given that there are already two existing dwellings with independent septic and water systems, the two lots already seem to be distinct lots.

Motion to Accept the Variance:

The Board of Zoning Appeals of the Town of Danby accepts the variances on Town of Danby Tax Parcel 5.-1-11.1 as requested.

Moved by Christine Decker, second by Allen Becker, the motion passed

Allen Becker	AYE
Gary Bortz	NAY
Christine Decker	AYE
Nancy Medsker	AYE
Alan Wagner	AYE

The Kaminsky/Oasis Public Hearing was opened at 7:50pm

PUBLIC HEARING to consider a Request for variance of Section 701- Limitation of Uses within 200 feet of a Residence Zone; and Section 1001- Nonconforming Uses of Land, of the Town of Danby Zoning Ordinance, in order to hold an event with amplified music in the Courtyard at Oasis Dance Club, Bar,

and Restaurant on September 8, 2010 from 5:00 p.m. to 8:00 p.m. The property is located at 1230 Danby Road, Tax Parcel 2.-1-8.1. Pamela Kaminsky, Owner/Applicant.

Pam Kaminsky briefly presented her case for a noise variance. The event is for the Tompkins County Chamber of Commerce "After Hours" business gathering. This is a networking event to showcase the Oasis Dance Club. Kaminsky hopes that the event will bring more business into the Danby area. Kaminsky contacted her immediate neighbors, requesting support. A petition is included in her application packet. An original request for four events has been scaled down to a one-time request.

Kaminsky notes that the objecting neighbors live on the south side of the building and that the courtyard is on the north side of the building. She believes that the building will block the noise to those neighbors.

Randy Ingells spoke in opposition of a variance for any outdoor amplified music at the Oasis. He stated that the owners have not negotiated in good faith. He expressed concerns about noise levels and dust from the parking lot. He also noted past problems with lights from the building and drinking and other inappropriate behaviors in the parking lot. These problems have not been addressed by the current owners.

James Reagan spoke in opposition, expressing similar concerns. He stated that he and his partner originally wanted to support Kaminsky in her request but that negotiations had not gone as they hoped and expected. He is afraid of, "the slippery slope." Previous experiences with the prior owner have soured his feelings towards activities at the Oasis. Reagan states that, currently, the indoor music is louder than its been. He is suspicious of the current process of negotiations for favors with neighbors.

Barry Craddock spoke in opposition to the variance. He also spoke for neighbor Heidi Bennett, who was not able to attend the hearing. He also complained that the noise level from indoor music, especially in the summer when the doors are open, is "unbearable." He pointed out that some of the neighbors on the petition for approval are not residences but public properties such as the American Legion and the Kingdom Hall.

Mr. & Mrs Smith spoke in favor of the variance. They stated that they enjoy the music heard from the club and have had no problems from the club in the 40 years that they have lived across the street. They see no problem with the timing of the event.

Linda Bryan spoke in opposition to the variance. She agrees that negotiations between the Oasis and neighbors have not been done in good faith. While the current appeal for variance is only for three hours in the afternoon, noise levels at the club have been problematic. She wants quiet during summer afternoons. Bryan also believes that this would misrepresent the business. If it had not been for previous negative experiences, she would agree that this was a reasonable request. However, she thinks that the sound level of indoor music has gotten worse rather than better, and can not approve of outside music.

Pam Kaminsky responded to complaints, in part saying that these neighbors bought their properties when the business was already a bar/dance club. The resolution restricting outdoor music at this club was passed in 2005. She explained attempts to mitigate dust and trash in the parking lot. She also explained ways they have patrol activities in the parking lot. Kaminsky stated that attempts to communicate her plan for outside music with Reagan and Ingells were rebuffed. She states that there have been no complaints to the police since 2009, according to police records.

James Reagan responded to Kaminsky's comments saying that, in his opinion, a written proposal stating something in conflict with a verbal agreement is a sign of bad faith negotiations. He believes, especially given past experience, that it was important for Kaminsky to keep to her word. In his way of

thinking, this shows poor judgement. Ingells added that the form she presented for the neighbors to sign, in support of her request for variance, did not reflect their position. He further stated that recent events have proved that the Oasis staff is not controlling what happens in the parking lot any better than the previous owner. He believes that Kaminsky is not negotiating in good faith.

Bryan stated that while they bought their property knowing that they were near a bar, Kaminsky bought the property knowing of past tensions between the club and the neighbors. The neighbors restated that they are afraid of the “slippery slope.”

Oasis Public Hearing closed at 8:15pm, to open BZA meeting

Discussion and questions:

There was a general BZA discussion about unresolved issues between the Oasis Dance Club and adjacent neighbors. BZA members expressed that they didn't have a problem with this one-time use but acknowledged that there are existing problems between Oasis and the neighbors which have an impact on granting this variance. Most of the concerns relate to late night use. The Chamber of Commerce group, meeting in the afternoon, does not seem to be one which would present behavior problems. While this may be a good event, there are fences which need to be mended. It was suggested that Kaminsky and the neighbors make further efforts to resolve problems.

The BZA asked questions of Kaminsky and the neighbors about security lights in the parking lot and hours when noise is a problem. Ingells replied that the back area of the lot, near a black walnut tree, is seldom patrolled and that people party there after hours. He also stated that music levels are high late at night and also during weekend afternoons. Kaminsky stated that she only has live music Friday, Saturday, and Sunday afternoons.

There was a suggestion to adjourn to a specific date, in an effort to be fair to all parties. It was noted that Kaminsky is trying to run a business and the neighbors want her to be able to run that business without their sacrificing a substantial quality of life. The BZA suggested that Kaminsky and the neighbors make an attempt to resume negotiations among themselves in order to begin the process of resolution. A decision will be made at that time, whether resolution is achieved or not. This will also give Kaminsky time to address some of the problems raised during this hearing.

Motion to adjourn and reconvene BZA meeting

The BZA agrees to adjourn this hearing without prejudice and to reconvene at 7:00pm on Tuesday, July 20 to finalize this hearing and come to a determination.

Moved by Allen Becker, second by Alan Wagner, the motion passed

Allen Becker	AYE
Gary Bortz	AYE
Christine Decker	AYE
Nancy Medsker	AYE
Alan Wagner	AYE

The BZA meeting was adjourned at 8:43pm.

Pamela S Goddard, BZA Secretary