

**Danby Board of Zoning Appeals
Minutes of Hearing and Meeting
April 22, 2013**

Present:

Allen Becker
Gary Bortz
Sarah Elbert
Joe Schwartz
Alan Wagner

Others Present:

Secretary Pamela Goddard
Public Phoebe Constantiou

BZA Chair, Al Wagner opened the Hearing at 7:07pm

PUBLIC HEARING to consider a request for variance of Article VI Section 600, Paragraph 1-a of the Town of Danby Zoning Ordinance to allow use of an existing third dwelling unit in a structure at 580 West King Road, tax parcel number 1.-1-12.3. Permitted use in a Low Density Residential Zone exclude multi-family (more than two-family) dwellings. Phoebe Constantinou, Owner/Applicant.

Public Comment

No correspondence was received from neighbors related to this request.

Constantinou informed the board that she had recently bought the rental property at 580 West King Road. She was aware that this was being operated as a three unit rental when she entered negotiations to purchase the property, and was aware at that time that the basement apartment was not legal according to Danby zoning and code. At the time of closing, the basement renters were asked to move out and the building reverted to a two family rental. Her intention is to improve that unit, making it safe by bringing it up to code, and increase the rental value for income. In her opinion it has been occupied for such a long time as a three unit rental, this would not negatively impact the neighborhood.

The board asked several questions of the applicant, including the current status of the basement apartment, the layout and entrances of the apartments, and the type of renters. Constantinou explained that she was aware that the building had been designed as a two unit rental. She had been advised by her realtor that she would be able to appeal for a variance of this usage. Constantinou does not want to have an illegal rental. The current renters are single households, not students.

There were some questions about when the third unit was created and when the Code Officer became aware of the violation. Code Officer Beeners had provided background information, including letters to the property owner dated 2006 informing him that the property should be assessed and occupied as two dwelling units only. Constantinou informed the board that she had consulted with the Health Department to confirm that the septic system is adequate for a three "household" rental property.

Bortz asked about the feasibility of creating interior stairways to connect the main floors to the basement. This might facilitate the expansion of these rental to three bedroom units from the current two bedroom units. This adaptation could enhance the rental value for the property.

The hearing was closed at 7:35pm

Constantinou Variance Discussion

The Board of Zoning Appeals held a substantial discussion regarding the general difficulty in granting a Use Variance. The board expressed its appreciation of the applicant's honesty. In the opinion of this board, a use variance is very rare. This type of variance has a higher magnitude than a variance for set backs or road frontage. This would change the zoning for that property, in essence "un-doing" zoning, and so is highly problematic. No other hardship was seen in this case.

Members of the board encouraged the applicant to review a revised plan with staff in the Danby Code Enforcement Office. The renovations may require building permits.

MOTION TO DENY THE VARIANCE:

The Board of Zoning Appeals of the Town of Danby denies the request for variance on Town of Danby Tax Parcel number 1.-1-12.3. The property is to be maintained as a two household rental unit.

Moved by Gary Bortz, second by Allen Becker, the motion passed

Allen Becker	AYE
Gary Bortz	AYE
Sarah Elbert	AYE
Joe Schwartz	AYE
Alan Wagner	AYE

Adjourn

The Meeting was adjourned at 7:50 pm.

Pamela Goddard, Board of Zoning Appeals Secretary