

**Danby Board of Zoning Appeals  
Minutes of Hearing and Meeting  
August 7, 2013**

**Present:**

Allen Becker  
Gary Bortz  
Sarah Elbert

**Absent:**

Joe Schwartz (due to emergency)  
Alan Wagner (due to emergency)

**Others Present:**

Secretary            Pamela Goddard  
Code Officer        Susan Beeners  
Public                Earl and JoAnn Ekdahl, Attorney James Salk

**BZA Chair Pro tem, Al Becker, opened the Hearing at 7:18pm**

PUBLIC HEARING to consider a request for variance of the minimum 200-foot frontage requirement provided in Section 600, Para. 5 of the Town of Danby Zoning Ordinance in order to subdivide Tax Parcel 4.-1-6.2, 105.51 acres total, into a 67+/- acre lot containing the residence at 1118 Autumn Ridge Lane; and a 25+/- acre lot containing the residence at 1120 Autumn Ridge Lane. Both of said lots would have 151 +/- feet of frontage. (A 13-acre portion of the Parcel would be conveyed by land annexation to an adjoining parcel.) Ethel Johnson, Fred Johnson, Sheri Johnson, and James R. Henry, Owners.

**Public Comment**

An Email exchange related to this request was received from neighbor Andrew Novakovic and distributed to members of the Board of Zoning Appeals and Code Officer. After communication from the Code Officer and one of the members of the BZA, Novakovic expressed no further questions or concerns.

Attorney James Salk spoke on behalf of the applicants. This is a large parcel of land on which the houses have already been built. No additional development is planned or will immediately result from granting this request for variance. He made the case that there will be no visible change and no change to the neighborhood if this is granted. There will still be a substantial amount of road frontage for each parcel, although not the amount currently required by the zoning code. At the time a building permit was issued for the second home, the zoning code did allow 150 feet of road frontage. The intention at that time was to subdivide the property. The second home was built for Sheri Johnson's parents. The families would now like to sell one or both of the properties, as the Johnson/Henry family needs to move to California for at least one year (due to work). Marketing this property would be easier if the it were divided.

A decision in favor would simply allow two unrelated families to own the properties. Becker noted that these were not the only property owners who were caught by the 2001 zoning change regarding road frontage.

Novakovic had a question about driveway easement. The Attorney and Code Officer agreed that deeds for properties on Autumn Ridge Lane are clear about driveway rights of way. The Attorney was not aware of any other negative feedback or concerns from property neighbors.

The neighbors, the Ekdahls, had no complaints about the request for variance but had concerns about the safety of winter access on the driveway. Sarah Elbert responded that this is her concern as well. There was a lengthy discussion about driveway right of way and maintenance, especially during

winter. Elbert described the Lane as steep, windy, and potentially dangerous in bad weather for fire and rescue vehicles. Elbert asked whether the Town or BZA had the right to ask the fire chief to take a look at this road? Beeners noted that this is a pre-existing condition, as the Lane (which is not a Town road) met code when it was constructed. Beerers and Salk point out that the road condition will be the same whether the subdivision variance is granted or not. There is nothing to trigger an inspection or upgrade, as nothing new is planned. Salk further noted that even if a maintenance agreement is drafted between the homeowners along that Lane, it would be a private agreement among the several owners and unenforceable by the Town.

A SEQR determination, prepared by the Code Officer, was distributed among the members of the BZA. Becker noted that approval to subdivide is required by the Planning Board. Beeners addressed the timing of the road frontage change in 2001 in relation to the building of the house at 1120 Autumn Ridge Lane. The Special Permit to build was issued approximately one month after the zoning change was enacted into law.

### **The hearing was closed at 7:43pm**

### **Variance Discussion**

Bortz asked questions about how the property was granted a special permit for a second structure in 2001 and why the property had not been divided at that time. He questioned whether the need of the property owner to sell quickly should be considered a hardship as a property owner will not know how and when any parcel might sell. The Attorney noted that it is more advantageous to list two properties rather than one with two houses. In any case, a buyer can not sign a contract without BZA approval. Becker expressed a view that the property owner had tried to do the right thing. The owner was caught in a zoning change at the “11<sup>th</sup> hour” of construction.

There was continued discussion about Elbert’s concern regarding the safety of the driveway and whether this had any bearing on a decision to grant or deny the variance. The Attorney expressed the opinion that it was not in the BZA’s jurisdiction to determine whether Autumn Ridge Lane is a legal driveway. Elbert expressed her discomfort over the use of a risky road.

Attorney Salk brought focus back to the frontage requirement and need for a variance in order to sell one portion of the property. Becker agreed that there would be a burden on all parties in a real estate transaction if the request for variance was denied. Beeners outlined the questions before the board: practical difficulties, alternatives, and effect on neighborhood character. She noted that there are no alternatives to splitting the property and that this will have no effect on the neighborhood as there will be no change in use or additional development.

### **MOTION TO GRANT THE VARIANCE:**

The Board of Zoning Appeals of the Town of Danby approves the variance on Town of Danby Tax Parcel number 4.-1-6.2 as requested. The Board of Zoning Appeals recommends that the 13 acre portion of the Parcel be conveyed to an adjoining parcel as proposed.

**Moved by Becker, Second by Bortz, the motion passed**

<b>Gary Bortz</b>	<b>AYE</b>
<b>Sarah Elbert</b>	<b>NAY</b>
<b>Allen Becker</b>	<b>AYE</b>

### **Adjournment**

The Meeting was adjourned at 8:03pm.

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Pamela Goddard, Board of Zoning Appeals Secretary