

**Danby Board of Zoning Appeals
Minutes of Hearing and Meeting
November 19, 2013**

Present:

Allen Becker
Gary Bortz
Sarah Elbert
David Hall
Joe Schwartz

Others Present:

Secretary	Pamela Goddard
Code Officer	Susan Beeners
Public	Wayne Woodward, Pam Millar, Carl Crispell, Jane McGonigal, Thresa Gibian, Stephen Gibian, Pat Longaker, Leslie Connors, Lewis Derry

BZA Chair, Joe Schwartz, opened the Hearing at 7:04pm

PUBLIC HEARING to consider a Request for Variance of the minimum 200-foot frontage requirement in Section 600 Para. 5 of the Town of Danby Zoning Ordinance in order to purchase Tax Parcel 5.-1-9.2, 42.73+- acres total, on Coddington Road and with 35 +/- feet of frontage, as a buildable lot. Hubert F. Dorn, Owner, Wayne Woodward, Applicant.

Public Comment and Board Discussion

Wayne Woodward presented his request for an area variance to make this a buildable lot. He was approached by Hubert Dorn about purchasing the property in question. Woodward and Dorn have used the lot for recreation for many years. Woodward is interested in the property for hunting and recreation. Woodward stated a close connection to this parcel and to the Dorn family.

Part of Woodward's purchase plan is to construct a pole barn on property, to store equipment such as a tractor. If he is going to go the expense of putting a driveway in for a pole barn, he would like the option to build a house as well. Woodward stated that building a house is not an immediate goal or plan.

He thought it would be good to address his concern, and any concerns from neighbors, prior to purchasing the property. He stated his desire to have a congenial relationship with the neighbors. He was sensitive to the fact that the existing right of way goes behind a neighbor's house.

Pat Longaker spoke in favor of the variance. She owns land on Coddington Road adjacent to the Dorn property. She is in favor of "flag lots" as a way to develop while preserving the appearance of rural character.

Pam Millar, 1272 Coddington Road, expressed her deep concern about a driveway and house going in along the border of her property. The access to the property in question is so narrow that she was unaware that this was a separate parcel of land. The only option would be for a very long, steep driveway. She was concerned that this would be very obtrusive. Woodward responded that he wants to have the pole barn further up the hill, with the hope that this would be less obtrusive for both of them. Millar was also concerned about potential noise from construction.

Millar asked several questions about the potential aspects of the requested zoning variance - would Woodward be able to construct more than one home? Would the variance carry to a new owner, should Woodward resell the land? Members of the BZA clarified that the variance would go with the land deed and would restrict the owner's ability to additional building. Any further request or modification of the variance would have to be re-evaluated by the Zoning Board.

Bortz asked questions about the code requirements for fire and rescue access. Beeners responded. The current access for this property is adequate.

There was a lengthy discussion about the complicated process of the Dorn property being split into smaller parcels and the impact of those land divisions on the parcel in question. The long, narrow "leg" for road access was a remnant of other land divisions.

Stephen Gibian, 1379/1380 Coddington Road, spoke to the question of Dorn land divisions and the road frontage on this parcel. Gibian stated his belief that the problem of insufficient road frontage was self-created by the Dorn family. He shared research from deed searches and survey information. The land splits began in 1973. Additional land transfers were made in the 1980s and 1994/95. The parcel in question was the result of a split in 1986. All of these land splits were done by the Dorn family.

Gibian asked for clarification about what Woodward intends in the way of recreation. He expressed concern about the use of ATVs and dirt bikes, which he said was "out of control" about ten years ago. The noise from these vehicles would impact his quality of life.

There was further discussion of the zoning regulations at the time of the Dorn land transfers from 1986 to 1995. Beeners confirmed that the required frontage at that time was 150 feet. However, road frontage is not required in the private sector to buy or sell a parcel of land. The road frontage requirement takes effect when there is a request to build a dwelling.

Thresa Gibian, 1379/1380 Coddington Road, expressed her concern about potential noise from some recreational uses or from construction and maintenance of a driveway and home. She reported that sound travels easily and far in that valley.

Wayne Woodward responded to the concerns about recreational vehicle noise. His intention is to create food plots for hunting. He stated that he also liked his peace and quiet.

Sue Beeners reported for Alfredo Torres, an adjacent neighbor on Coddington Road, regarding his concerns about the uses of a pole barn and that construction of a driveway, and related drainage, be handled sensitively.

Beeners and members of the BZA engaged Woodward in Q&A about a right of way through the H. Dorn, Jr. land to the parcel in question. There were further related questions for clarification from the BZA members.

Lewis Derry made comments regarding precedence in any decision made by the Board of Zoning Appeals. This is a concern, as there is pressure to develop in this neighborhood and others in Danby.

T. Gibian added to her comments regarding noise impacts, regarding snow plowing early in the morning if there is a driveway and home there.

Woodward offered to locate a potential building a certain distance from other property boundaries in order to protect the neighbor's privacy. There was discussion of the relevance of this offer in regards to the request for frontage variance. Woodward made the case that he was attempting to be as fair as possible with the neighbors. He was willing to have this restriction added to the variance.

Millar asked for clarification, what happens in future if Woodward puts in driveway and then sells? Her question was whether a variance, and any restrictions, goes with the property. Members of the BZA confirmed that the variance and any restrictions go with the land abstract. They also noted that no variance was needed for a driveway, only for a structure.

BZA Chair, Joe Schwartz, closed the Hearing at 8:02pm

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Board Discussion

There was a lengthy discussion of self-imposed hardship on part of Dorn as seller. Members of the BZA noted that the problem was created long ago by the original owners and is not the fault of this applicant. Several felt that, at 43 acres, there was plenty of land to justify one house located at a distance from the neighbors. Given the concern about noise and recreational uses of the land, some BZA members thought that having a house in the middle of that property might mitigate disturbance from ATV or dirt bike recreation.

There was a lengthy discussion of the history and intent of the Danby Zoning Ordinance in regard 200 feet of road frontage, maintaining rural character, and building density. Joe Schwartz expressed a grave concern about maintaining the rural character through a minimum of frontage. He cited a long history of zoning changes in keeping with the town's Comprehensive Plan. He was concerned about mistakes made on Coddington Road by creating lots with insufficient frontage.

MOTION TO DENY VARIANCE:

The Board of Zoning Appeals of the Town of Danby denies the Woodward Request for an area variance due to insufficient road frontage. The Board finds that this is a self imposed problem created by the original owners.

Moved by Schwartz, Second by Becker, the motion failed

Allen Becker	AYE
Gary Bortz	NAY
Sarah Elbert	NAY
David Hall	NAY
Joe Schwartz	AYE

There was continued discussion of this request for variance. Part of this discussion related to the aspect that this is a pre-existing condition, dating back several decades. The variance in the case will not create or correct the problem with road frontage. Members of the BZA made the case that the property has more than enough acreage for a single dwelling while maintaining rural character. In addition, the BZA could add a condition restricting this to a single family residence and as to the location of that residence. Others argued that 35 feet of road frontage is too large a discrepancy from the intent of the minimum 200-foot frontage requirement.

Beeners gave her opinion, as Code Enforcement Officer, of the Zoning Ordinance for a Low Density Zone. She noted that a side yard set back is 50 feet. In this case, the request for driveway and the house location will be well in excess of that. Beeners noted that the problem will not go away, should this request for variance not granted. Schwartz maintained that the minimum 200-foot frontage should be held in this case. Beeners countered that the current geometric layout is a limitation to density, given Woodward's proposal surpasses conventional setbacks and this is a 42 acre lot with one house.

Beeners and Hall entered a discussion regarding the charge to Zoning Appeals Boards through NYS Town Law 267b. Beeners noted that this law sets out the permitted actions by Zoning Boards of Appeal. For an area variance, the Board must consider whether there is a practical difficulty or unnecessary hardship that would be relieved, is the variance substantial, and is there an adverse impact on the neighborhood. Beeners contrasted this with a use variance, which considers economic hardship.

There was a discussion of precedence and consistency in granting zoning variances.

MOTION TO GRANT VARIANCE:

The Board of Zoning Appeals of the Town of Danby grants the Woodward Request for an area variance of the minimum 200-foot frontage requirement in Section 600 Para. 5 of the Town of Danby Zoning Ordinance in order to purchase Tax Parcel 5.1-9.2, 42.73+- acres total, on Coddington Road and with 35 +/- feet of frontage, as a buildable lot with the condition that any building be located to the west, above the high tension power lines and that this is restricted to a single family residential lot.

Moved by Bortz, Second by Elbert, the motion passed

Allen Becker	AYE
Gary Bortz	AYE
Sarah Elbert	AYE
David Hall	AYE
Joe Schwartz	NAY

Bortz initially added a condition that access be limited to the 35 foot frontage belonging to this property. There was discussion regarding access via a right of way through the Hubert F. Dorn property. This access would move a potential driveway further from the adjacent Millar property. Beeners recommended that mandating this condition not be in the language of the motion. After discussion, Bortz dropped that condition from the variance.

Adjournment

The Meeting was adjourned at 8:53pm

Pamela Goddard, Board of Zoning Appeals Secretary