

**Danby Board of Zoning Appeals  
Minutes of Hearing and Meeting  
March 25, 2014**

**Present:**

Allen Becker  
Gary Bortz  
Sarah Elbert  
David Hall  
Joe Schwartz

**Others Present:**

Secretary	Pamela Goddard
Code Officer	Susan Beeners
Public	Steve Willcox, Russ Cornwell, Amie Hamlin, Elizabeth Owen Roe, Robert Roe, John and Val Shepardson, Michelle Fullagar, Leslie Connors, Garry Huddle

**BZA Chair, Joe Schwartz, opened the Hearing at 6:56pm**

PUBLIC HEARING to Consider granting Variance from the minimum 50-foot side yard depth provided in Section 600, Para. 6 of the Town of Danby Zoning Ordinance in order to permit a proposed seasonal 252-square-foot ice cream stand to be located with a side yard depth of 29 feet; AND, FURTHER, to Consider granting Variance from the requirement of Section 706, Para. 4 that there shall be no parking in any required front, side, or rear yard or buffer zone, in order to permit parking spaces for the ice cream stand to be located within the 50-foot front and side yards with no setback depth, on the west side of Danby Road north of its intersection with Muzzy Road on Tax Parcel 2.-1-23.321. Suzanne Hiney Willcox and Steve Willcox, Owners/Applicants.

**Public Comment and Board Discussion**

Steve Willcox described a business which will serve primarily hard and soft serve ice cream from sometime in May through Labor Day. It is anticipated that there will be 1-2 employees, generally from the Willcox family. The stand itself will be designed to blend in with nearby farm buildings. Signage will be a simple wooden sign, perhaps on the side of the sales building. Willcox anticipates that the business will operate from between 10am and 9 or 10pm. Code Officer Beeners noted that this was approved as an "Other Use" special permit by the Planning Board on January 16, 2014.

There was a discussion regarding safe traffic flow into and out of the building. Willcox stated that the parking lot was designed for 4-6 cars. Bortz expressed concern that this would not be sufficient if the business is successful. Beeners spoke to parking requirements and constraints at this property. Geographic and structural constraints require that the applicant seek a variance. She advised that the variance be granted, as this is a tight spot.

There was a lengthy discussion about whether the business would have one entrance/exit or two. Hall asked whether it was possible to loop a driveway through the barn area and have additional parking there. Willcox stated that this could be done. Beeners advised that on-street parking is prohibited in the zoning ordinance and that the owner/applicant would be responsible for enforcing this.

There was a short discussion regarding possible "ice cream ahead" signs near the entrance.

**BZA Chair, Joe Schwartz, closed the Hearing at 7:30pm**

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### **Board Discussion**

There was further discussion about parking, in favor of a circular drive with additional spaces in the area of the pumpkin stand. Each board member expressed their opinion about the variance request.

“No Parking” on the state highway (Route 96b) would be enforced by state troopers. There was a discussion regarding entrance/exit and signage in relation to traffic visibility. There was further discussion as to any town liability in the case of accidents. Beeners read from the Zoning Ordinance, to clarify the question, and found that there is no prohibition against on street parking.

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

The Board of Zoning Appeals of the Town of Danby approves the variance with the following conditions:

- a: the applicant work with the Code Enforcement officer to design an additional 4-6 or more parking spaces
- b: at no time shall on street parking be allowed
- c: at no time shall signage obstruct entrance and egress visibility.

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

<b>Allen Becker</b>	<b>AYE</b>
<b>Gary Bortz</b>	<b>AYE</b>
<b>Sarah Elbert</b>	<b>AYE</b>
<b>David Hall</b>	<b>AYE</b>
<b>Joe Schwartz</b>	<b>AYE</b>

## **BZA Chair, Joe Schwartz, opened the SECOND Hearing at 7:45pm**

PUBLIC HEARING to consider a Request for variance of the minimum 150 foot frontage requirement in Article 600, Para. 402 of the Zoning Ordinance for High Density Residential Zones in order to subdivide a portion of Tax Parcel 14.-1-3.2, 19.69 acres total, located on Michigan Hollow Road, into two parcels of 9.8 +/- acres each and with each parcel having 123 feet of frontage. Judith Lehman, Owner; Russ Cornwell, Applicant. The Town of Danby Planning Board granted subdivision approval for the proposed subdivision on Feb. 27, 2014 conditional upon application to and granting of such variance by the Board of Zoning Appeals.

### **Public Comment and Board Discussion**

Russ Cornwell spoke on behalf of his application and answered questions from the board. He explained the the plan to divide the property into two equal lots with a shared driveway to accommodate two single family dwellings. The families are not related to each other. Each house will be relatively small. They plan to keep the rear of the property open for minor agriculture including an organic garden and free-range chickens.

Beeners clarified the history of tax parcel 14.-1-3.2, which had been two separate deeds consolidated for tax purposes. These could be split as deeds of separate record. The other deed/parcel has been sold to a different person. Both buyers of the 19.69 acre subject property were in attendance to answer questions. The property has not previously been brought up for subdivision.

Amie Hamlin, the other party to the potential subdivision, stated that, as they are two different families they need two houses. They are searching for similar land, and so have entered into this agreement together. She further stated that she’s been looking for land for six years and this is the first parcel which meets her needs.

There was a discussion of driveway length and width. Beeners informed the board that this driveway will be a minimum 12 feet wide to meet fire code. There were questions about having the dwellings back on a 300+ foot driveway. Becker objected to the houses being far back and would prefer that they be built on the road.

The board asked questions about development in High Density Zone. Beeners noted that the proposed building locations are in a high density zone with a minimum lot size of one acre. She noted

that some Planing Board members wondered why this shouldn't be designed for more dense development. The applicants wish to keep this less dense.

Questions were asked regarding an adjacent property in foreclosure and whether this was available for purchase, in relation to getting enough frontage so no variance was required. The foreclosed property is currently in "legal limbo" through the Bank of America. The applicant has attempted to contact an owner, without success.

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

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### **Board Discussion**

There was lengthy and extensive discussion about this variance request. Becker and Elbert were not in favor of the houses being so far back from the road and thought that the property should only be allowed one house.

Bortz saw nothing wrong with the variance request and thought it was "doable." He noted that each piece having more than nine acres would more than support a well and septic system and that this level of density is in keeping with the neighborhood.

Schwartz stated the view that this lot was good for one house and saw nothing compelling about the request. He said that this would be pushing the limits of the zoning ordinance. That there was no real hardship, as other lots of land are available for purchase. He was uncomfortable approving a variance until the question of the property under foreclosure was resolved.

Beeners reminded the board that this property in question is zoned High Density, where more intense density is encouraged. She encouraged the board to compare this request with the lot sizes on Michigan Hollow Road between this property and Danby Road, as well as the lots on adjacent sections of Bald Hill Road. This is already a rather densely developed area.

Hall asked questions about one acre lots in High Density zones and the requirement for 150 feet of road frontage. Should this be revisited in the zoning ordinance?

Elbert expressed concerns about the shared driveway and what might happen to maintenance when the properties change hands. This led into an extensive discussion of the proposed driveway and future owners and/or development. The applicants explained that this was designed with future use in mind, as the single driveway could easily be expanded into two side by side driveways at a future date.

Hall stated he was still weighing the pros and cons, but saw that this was in step with the goals for the area. The amount of acreage in relation to 27 feet of frontage requirement seemed like a decent balance in regards the variance request.

There was continued discussion without much change of the positions of the board members. Beeners repeated the purpose of the High Density zone and goals of the Comprehensive Plan for this area. She asked the board to consider giving the applicants the option to withdraw their request if the board was leaning toward a "no vote."

The applicant spoke to the question of whether the property under foreclosure would be available for purchase. From what he knows, there is no indication of how long the foreclosure process will be or when the property will actually come up for sale. There is no way to contact the owner. The amount of debt is more than the property is worth. He also stated that, given his lifestyle with raising animals, he does not want to live close to the road. They want a shared driveway in order to conserve land. They are also interested in this particular land because it has not been touched in more than 20 years and is therefore suitable for organic agriculture. The soils are particularly suited to the type of farming that they want to do. Splitting the property with a second owner seeking similar conditions makes this financially viable for them. The second family/applicant echoed these interests and con-

cerns. She stated that she's been looking for a suitable piece of property in the boundaries of the Ithaca City School district for seven years. This is the first option which can work for her.

Hall noted that these applicants have a special purpose to seeking this specific land, and that this makes a compelling case for the variance. Hall added that the property under foreclosure would not "make the deal" and should be removed from consideration as an option for additional road frontage.

Both Schwartz and Elbert remained convinced that the minimum frontage requirement be met in some way. Becker suggested that the applicants build a two family dwelling, as is permitted, and avoid the need of a variance in this way. Beeners noted that, given that provision in zoning, this request does not change the density of the lot. There was a discussion regarding the possibility of adding a restriction that the subdivided properties shall not be further subdivided, as a way to preserve the existing density.

There was a discussion of whether this should be withdrawn with a petition to the town board to revisit the frontage requirement in high density zones in the town zoning law.

Beeners made a recommendation that the applicants approach Ben McClintic, the new owner of 14.-1-3.2, to determine whether they might be able to get some additional frontage. The required frontage does not need to be contiguous.

The board and applicant had an extensive discussion of pros and cons of withdrawing the request or adjourning the hearing without prejudice for a period of time, in order to allow the applicant to explore other options. Options discussed included interest in the property to be foreclosed and researching acquiring land from the other parcel of 14.-1-3.2 to make up the required frontage.

#### **MOTION TO ADJOURN WITHOUT PREJUDICE:**

The Board of Zoning Appeals of the Town of Danby **adjourns without prejudice** the Lehman/Cornwall Hearing regarding a Request for variance of the minimum 150 foot frontage requirement in Article 600, Para. 402 of the Zoning Ordinance for High Density Residential Zones in order to subdivide a portion of Tax Parcel 14.-1-3.2, 19.69 acres total, located on Michigan Hollow Road, into two parcels of 9.8 +/- acres each and with each parcel having 123 feet of frontage. The hearing will be adjourned for no longer than 30 days, to give applicants an opportunity to seek a remedy to the frontage deficiency. The Hearing will be **reconvened** on April 22, 2014.

**Moved by Schwartz, Second by Hall, the motion passed**

<b>Allen Becker</b>	<b>AYE</b>
<b>Gary Bortz</b>	<b>NAY</b>
<b>Sarah Elbert</b>	<b>AYE</b>
<b>David Hall</b>	<b>AYE</b>
<b>Joe Schwartz</b>	<b>AYE</b>

#### **Roe Request - Schedule Hearing**

Robert and Liz Roe presented preliminary information about a request for variance. There was some question as to whether the property was "grandfathered," as a new structure will be set on the approximate location of the old structure (destroyed by fire). This question will be sent to the town attorney for opinion. A hearing was tentatively set for April 22, 2014.

#### **Adjournment**

The Meeting was adjourned at 9:12pm

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Pamela Goddard, Board of Zoning Appeals Secretary