

**Danby Board of Zoning Appeals
Minutes of Hearings and Meeting
April 22, 2014**

Present:

Allen Becker
Gary Bortz
Sarah Elbert
David Hall
Joe Schwartz

Others Present:

Secretary Pamela Goddard
Code Officer Susan Beeners
Public Elizabeth Owen Roe, Robert Roe, Amie Hamlin, Brent Katzman, Leslie Connors

BZA Chair, Joe Schwartz, opened the FIRST Hearing at 7:00pm

PUBLIC HEARING to Consider granting Request for variance of the minimum 50-foot front yard depth provided in Section 602 of the Town of Danby Zoning Ordinance in order to construct a residence with a front yard depth of 45 feet, at 1820 Danby Road, Town of Danby Tax Parcel 10.-1-19.12. High Density Residential Zone. Robert Roe and Elizabeth Owens Roe, Owners.

Public Comment and Board Discussion

No written correspondence was received regarding this request for variance.

Comments from Roes. They reported that their neighbors, the Myers, are supportive of the variance request. They pointed out that, due to the nature of the development of dwellings in this section of Danby Road (built long prior to zoning), other nearby houses are not "in compliance." Therefore this variance request is in keeping with the nature of the neighborhood. Most houses have a setback of 30-40 feet.

The old house had 37 feet of frontage to the road. The new house will be a bit further back but still within compliance of the septic system. The new house will be basically the same footprint as the old house, which was lost to fire in 2011.

Q&A between BZA and Roes. Question of whether the house could be moved further back or placed in a different location on the property. Other locations are problematic for septic and water, or would require setback variance at a different location on the road. If the proposed site were moved back 50 feet, this would encroach on both the the septic system and the creek. The new house will use the old existing septic and well. The existing septic system was designed for a six bedroom house. The new house will be one bedroom, all on one level. The septic system should be more than adequate for the new structure.

MOTION TO GRANT VARIANCE:

The Board of Zoning Appeals of the Town of Danby approves the variance as stated: Request for variance of the minimum 50-foot front yard depth provided in Section 602 of the Town of Danby Zoning Ordinance in order to construct a residence with a front yard depth of 45 feet, at 1820 Danby Road, Town of Danby Tax Parcel 10.-1-19.12.

Moved by Becker, Second by Hall, the motion passed

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

BZA Chair, Joe Schwartz, opened the SECOND Hearing at 7:17pm

MOTION TO RECONVENE:

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.

Reconvened Applicant and Board Discussion

Beeners explained some changes in the request. Russ Cornwall has withdrawn, while Amie Hamlin continues the request as the new applicant. She referenced a letter that Hamlin sent to the BZA prior to this hearing being reconvened. The BZA also received written correspondence from the adjacent property owner, Benjamin McClintic. Hamlin checked with McClintic and he is not interested in selling land in order to add to the frontage of the the parcel she wishes to subdivide. McClintic and Hamlin assert that the suggestion to add to the property frontage through this method would not change the density or character of the neighborhood. As two dwellings are allowed on the property without subdivision, the variance will not change the density or character of the neighborhood.

There was Q&A between members of the BZA and Hamlin about who is purchasing and what the applicant is asking for. There was a question of property owner input/involvement in this process. Beeners explained that the variance will go with the property. The variance is related to a purchase offer on the property. The property owner lives far out-of-state and was unable to attend the hearing. Beeners confirmed that the Planning Board has approved a subdivision for the property. Beeners has been in frequent contact with owner Lehman regarding this property. Hall suggested that there be something official from the owner, signifying that this variance request has the owner's approval.

Brent Katzman, real estate broker, spoke on behalf of the applicant stating that the purchase offer agreed to by both parties is contingent on the approval of this variance request. He informed the Board that a new purchase offer contract will be drafted, with the new applicants, should this variance be approved.

There was a lengthy discussion regarding whether a different parcel of land might suit the needs of the applicant. Hamlin asserted that this property best suits her needs and what she is able to afford. She has also had good interactions with the neighbors of this property. Hamlin requires the variance, as she can not afford the entire 19.69 acre parcel of land.

Some members of the BZA were hesitant to grant the variance for various reasons. Schwartz thought that, "the benefit sought by the applicant can be achieved by some method," other than subdividing this parcel, e.g. find a different parcel of land. Bortz did not think that this is what this section of the zoning law intended. Hall also interpreted that section of the zoning law differently, with an emphasis on, "feasible for the applicant to pursue," noting that this is very subjective.

While Elbert agreed that there are many subjective aspects to buying a piece of land, she thought that the frontage deficiency, "was self-created," by the fact of the subdivision approval and of this current request for a variance. She stated that, as there are potentially numerous buyers for any parcel of property, and as the public interest which the BZA serves importantly involves integrity of Danby lands as well as the personal interests of buyers or sellers, the integrity of the land was more important than people. Bortz and Hall disagreed that there was a "self created difficulty" in this case, noting that these are nine-acre parcels in an area zoned for high density.

Bortz further noted that the lot size is larger than many of the others in the neighborhood. He confirmed that this conforms with the neighborhood and has support of neighbors.

Becker was unhappy with the fact that there was a purchase offer on the property contingent on the granting of a variance. His view was that the applicant should purchase the entire property out-

right and then decide what they want to do with it. A counter-view was offered that the owner has already accepted any potential risk associated with a variance to allow subdivision.

Close Reconvened Hearing - 7:56pm

Open BZA discussion - 7:56pm

Elbert continued to assert a “self created difficulty” and was not in favor of granting the variance.

Bortz repeated that this proposed subdivision, and the amount of frontage for each proposed parcel, fits in with the neighborhood and more than meets the requirements for a High Density Zone. He also thought that the nearly ten-acre parcels would provide a sufficient buffer between these residences and Buttermilk Creek/Jennings Pond Park.

Hall reviewed the points to be considered in granting a variance. He also noted that this proposal meets the recommendations of the Comprehensive Plan, to keep density in certain areas. He suggested that there be a condition, that there only be one single family residence per lot. Hall further noted that there were no neighbor complaints to this proposal.

Schwartz continued to consider whether the applicant could find the “benefit sought” by other means. He considered that the conditions put on the variance might mitigate the deficit in the required. There was a discussion about ways in which this variance might help protect and limit the density in this area, with certain conditions. Code Officer Beeners provided legal perspective on this question. There was a related discussion with Bortz about the character of the neighborhood.

MOTION TO GRANT VARIANCE:

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

- a. there shall not be more than one single family dwelling and related structures per parcel,
- b. no building shall be located within 100 feet of the rear property lot line of adjacent tax parcels 14.-1-21.21 and 14.-1-21.22, nor within 150 feet of the side lines of these adjacent properties.
- c. These conditions shall be noted on the final property survey.

Moved by Hall, Second by Bortz, the motion passed

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

Adjournment

The Meeting was adjourned at 8:34pm

Pamela Goddard, Board of Zoning Appeals Secretary