

**Danby Board of Zoning Appeals
Minutes of Hearings and Meeting
March 26, 2015**

Present:

Allen Becker
Gary Bortz
Sarah Elbert
David Hall
Joe Schwartz

Others Present:

Secretary Pamela Goddard
Town Attorney Guy Krogh
Public Leslie Connors, Joshua Wilson, Joann Gruttadaurio, Michael Faber
 Peter Brown, Ray and Lori Maratea, Jim Holahan

BZA Chair, Joe Schwartz opened the Maratea hearing at 7:05pm

PUBLIC HEARING to consider a request for variance of the minimum 200 foot frontage requirement of Section 600, Paragraph 5 of the Town of Danby Zoning Ordinance, in order to subdivide Tax Parcel 4.-1-11.22, 20.85 +/- acres total, located on German Cross Road, into three (3) lots of approx. 2,2.4, and 16.4 acres each, where the lots would have frontage of 162, 162, and 25 feet respectively. Raymond and Lori Maratea, Owners.

Public Comment

No written correspondence was received related to this request.

Peter Brown (190 German Cross Road) spoke in opposition to the variance request for three lots. He cited significant water resource problems related to the rate of development in this area. Brown also stated that, approximately one year ago, he had been informed that there could never be more than two lots on this property without putting a road in.

Michael Faber (180 German Cross Road) spoke in opposition to the variance request for three lots. The Faber's well ran dry this winter several times. He was concerned about the impact of a subdivision and more houses on existing houses in the neighborhood. Faber was also concerned about the requested 25 foot frontage area and where an access road might be located in relation to his property.

Lori Maratea responded to neighbor concerns, clarifying the frontage request. Their intention is to have the 25 foot access be in the middle of the two other lots with a driveway to the rear lot in the center.

Jim Holahan spoke in opposition to the variance request and reported numerous water and well problems on Coddington Road, as a result of development pressure during the past seven to ten years.

BZA member Hall asked the Town Attorney whether it was permissible to add a condition to the variance request, that any development be single family homes only. The Town Attorney confirmed that adding conditions is permissible if there are known impacts to the community. The BZA may also weigh impacts and conditions for what may be appropriate for the neighborhood in the light of Town zoning and its comprehensive plan.

BZA member Bortz proposed subdividing the property with one parcel of five acres meeting the zoning requirement of a minimum 200 feet of road frontage and the remaining parcels more evenly divided.

Lori Maratea presented the reasons for their request for variance. She and her husband had bought the property believing that it was possible to have four houses on 23 acres of land. Their intention is to build a retirement home closer to town and near their children and grandchildren. The Maratea's daughter has already built a home on German Cross Road. Ray and Lori would like a house closer to

the road with a shorter driveway. They would like two additional lots (three in total) for eventual homes for their two sons. One son is interested in building in the next five years. It is uncertain whether the second son will want to build in the near future, but they wish to make this possible.

Lori Maratea presented a revised request for three lots: one of approximately two acres and two roughly equal lots of approximately nine acres each. She stated that the two sons are interested in leaving the area around their future homes undeveloped, in woodlots.

The BZA informally discussed the implications of this change in the request.

BZA Chair Schwartz “took the pulse” of the Board, while keeping the Hearing open in order for additional comments from the public. Becker polled neighbors present regarding the depth and reliability of their wells. Elbert expressed concern about development through duplexes at this location, given the rate of development the neighborhood has already undergone.

Joann Gruttadaurio (234 German Cross Road) expressed concern about development and the changing character of the neighborhood. She values the woodlot natural buffer and asked whether a condition to maintain that buffer could be included.

Members of the BZA asked questions, clarifying the revised request before them. L. Maratea reported that they had been informed that they could bring a change in their request to the hearing, rather than reapplying. The Board clarified that neighboring properties with smaller road frontages date from an earlier time when there was a different code and requirement in the zoning. Parcels B and C would now be roughly 9 acres each, vs. parcels of 2.4 and 16.4 acres as originally requested.

The Board discussed the complexities of aquifers and water resources. There is much that is not currently known about the aquifer in this area. Becker clarified that decisions of the BZA are a best attempt to think ahead for the well-being of neighbors and the community. Access to water is a major concern. Peter Brown reported that a now retired Cornell Professor of Geology has done a hydrologic study of German Cross Road over a 25 year period as a case study with his students. The Town does not have access to this study at this time.

Schwartz proposed that the parent parcel be subdivided into two lots rather than three. His reasoning was based on detrimental impacts of increased development in the neighborhood and a concern about water resources in this area. The variance in minimum road frontage would not be so great for two lots (at 174 feet each) as it would need to be for three. Hall agreed that two lots might be more suitable, particularly with a condition that each lot be restricted to single family residences. Elbert supported the concept of a two lot variance rather than three. She is not in favor of flag lots. There was discussion among the Board as to how these lots may be configured, what conditions regarding natural buffers might be added, and how this might impact the building sites of the proposed homes.

The Marateas stated that single family home restrictions on each lot was acceptable. A variance for two lots, rather than three, was not acceptable. This would be a “deal breaker” for Ray Maratea, as it would mean that one son could build to be nearby but the other could not.

The hearing was closed at 7:55 pm

Maratea Variance Discussion

There was further discussion between members of the BZA, with questions to Town Attorney. Schwartz opened the discussion with the proposal to offer a variance for two lots with 174+/- feet of road frontage each. He proposed that lots be divided at the discretion of the land owners but that the smallest lot be at least five acres. The Town Attorney advised that this would be permissible. Krogh further advised that a future land owner can not be prohibited from applying for a variance. This is their right by law. Krogh noted that lots over five acres are actually substantially larger than those in the neighborhood. He further noted that there is a constitutional right to develop property. How the BZA balances this right with impacts and concerns of the community is their decision.

Schwartz responded that the request for variance for 25 feet of road frontage is substantial. However, his primary concern is the water resource problem.

Bortz proposed an alternate variance for three lots with the first lot having 200 feet of road frontage and the second and third lots to divide the remaining road frontage equally at 75+/- feet. He thought that there would then be plenty of land for three single family houses. Bortz said that there was no proof of what the water problems are, or where the aquifer(s) run, and that the houses may be able to find sufficient water.

There was discussion as to whether to adjourn without prejudice in order for additional research and information to be presented, prior to making a decision on this variance request. Elbert and Becker advocated for this approach. Schwartz advocated for either a withdrawal or taking a vote at this time. Schwartz was uncertain how much new information would be available in the 30 days allowed for an adjournment.

The Board of Zoning Appeals and Attorney outlined the process for adjourning without prejudice for more information, and possible outcomes if the request for variance is brought to a vote at this hearings and denied. An informal poll of the Board indicated that there was not support for approving a variance allowing three lots at this location.

The Request for Variance was Withdrawn by the applicants

Adjourn

The Meeting was adjourned at 8:17 pm.

Pamela Goddard, Board of Zoning Appeals Secretary