

Town of Danby Board of Zoning Appeals
Minutes of Hearing and Meeting
September 25, 2018

PRESENT:

Lew Billington
Gary Bortz
Toby Dean
Betsy Lamb
Earl Hicks (Chair)

OTHER ATTENDEES:

Town Planner C.J. Randall
Recording Secretary Alyssa de Villiers
Public Ted Crane, David Mastroberti, Mauricio Medina

The meeting was opened at 6:59pm.

CALL TO ORDER/AGENDA REVIEW

No changes were made to the agenda.

MINUTES APPROVAL

MOTION: Approve minutes from the March 27th meeting

Moved by Bortz, seconded by Lamb

The motion passed.

In favor: Billington, Bortz, Dean, Lamb, Hicks

PUBLIC HEARING

The Town of Danby Board of Zoning Appeals will hold a Public Hearing at 7:00 p.m. on September 25, 2018 at the Danby Town Hall, 1830 Danby Road, Ithaca, NY, to consider the application of David Mastroberti, Owner and Applicant, 808 Comfort Road, Tax parcel 9.-1-13.22 for an area variance from Article VI, Section 600(5) of the Town of Danby Zoning Ordinance. Applicant is appealing the decision of the zoning enforcement officer denying permission to subdivide the existing 43.15-acre parcel.

The public hearing was opened at 7:02pm.

Public Comment

Two letters were received from the public regarding this area variance appeal. One was from Russ and Kim Nitchman (54 Bald Hill Rd.) and the other from Ted Melchen (757 Comfort Rd.); both letters were in support of the proposed subdivision.

The applicant, David Mastroberti, gave a brief history of the property, and explained the proposed subdivision. He also answered clarifying questions from the Board. His parents bought a large parcel in the 70s, where he grew up. After they passed away, the land passed to the children, and was later subdivided into two parcels, one for David and one for his brother. Mastroberti now owns a single 43.15-acre property that is on both the east and west sides of Comfort Rd. near its intersection with Lieb Rd. On the west side of the road the land is in a horseshoe shape; this crosses Comfort Rd. and connects to an area on the east side with a tie line, allowing the property to be considered a single tax parcel. Historically, there was a small lot with 153' of road frontage directly east of the road that was a separate tax parcel and was a buildable lot, grandfathered in, having previously had a house on it. It was originally bought by his parents to keep it from active dumping. This small parcel was then consolidated, creating the tie line, to make one parcel for tax purposes.

Mastroberti would now like to sell the horseshoe-shaped land on the west side of the road to Mauricio and Erika Medina, keeping the parcel on the east side of the road himself. The Medinas would like to buy that land as two parcels so that a family member can help them with the cost of the property by purchasing one parcel. The issue is that this subdivision would create a parcel on the east side of the road with only 153' of road frontage, whereas the zoning ordinance requires 200' in Low Density Residential. Doing the subdivision as proposed would eliminate the tie line.

Mauricio Medina also spoke, explaining again about why they would like to buy the land in two parcels, and stating that they have been looking for land in the Danby area and that they have close ties with a person who owns a neighboring property.

Planning Board Recommendation

The Planning Board has recommended the Board of Zoning Appeals "grant the Area Variance to avoid creation of an additional, irregularly shaped lot with 47' of road frontage required to maintain the tax parcel's tie line across Comfort Road."

Randall explained that if Mastroberti did not get an area variance from the BZA, it would be possible for him to move forward with the project by keeping the tie line and a small stretch of property on the west side of the road. This would allow him to meet the 200' road frontage requirement as the frontage requirement is additive across the road with the tie line in place. She said that ownership of user roads, like Comfort Rd., extends to the center line of the road; a tie line will never exist across a State highway because ownership is marked differently. Tie lines can be desirable for tax purposes.

Randall added that the Planning Board is lead agency for the environmental review; the BZA can submit comments regarding environmental impact to them if they so choose. The subdivision will not move forward without the area variance being granted.

Discussion of Setback

In response to a question from Bortz about where he will put a house, Mastroberti said there is no house or house plans currently, but he would like the ability to build, and may pass on the property. If he were to build, he would build further back on the property where it widens out. Bortz followed up asking if he would be okay with a minimum setback provision to maintain the rural character of the neighborhood, to which Mastroberti said, yes, he would prefer no restrictions, but he would accept that. Crane added that that seemed reasonable since it made sure a new house wasn't trapped between the two nearby houses, which would reduce visual density.

There was also discussion of whether a limitation should be placed on any accessory buildings. Mastroberti expressed a preference that further limitations were not added. The Board decided not to add a condition on accessory buildings; any accessory structures built after a principal structure must follow existing zoning requirements.

Area Variance Findings & Decision

The Board of Zoning Appeals considered the Appeal of David Mastroberti, owner of property at 808 Comfort Road (tax parcel 9.-1-13.22) for an Area Variance from the Zoning Ordinance Section 600(5) road frontage requirement of 200 feet. The property is in the Low Density Residential Zone

1. The Board agreed that no undesirable change would be produced in the character of the neighborhood or any detriment to nearby properties. If the house was right at the road, it would take away from the intention of keeping density low, but with a setback condition applied, any future house would not be squished between neighboring houses along the road. Lamb added that the neighbors seemed not to think it would affect the feel of their neighborhood.
2. The Board agreed that benefit sought by the applicant could not be achieved by a feasible alternative of the variance. It was felt that maintaining the tie line and a narrow strip of land on the west side of Comfort Road to meet the road frontage requirement was not a workable alternative.
3. The Board agreed that the requested variance was not substantial. The reduction is from 200 feet to 153 feet, or approximately a 25% reduction. With the amount of acreage involved and the setback condition, this was not seen to be substantial.
4. The Board agreed the variance would not have an adverse impact on the physical or environmental conditions in the neighborhood.
5. The Board agreed that the alleged difficulty was self-created. However, the unique conditions relating to the original small parcel with the road frontage in question were taken into account.

Based on the above five factors, the BZA determined that the Benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community. A variance of 47' from Section 600(5) of the Zoning Code was found to be the minimum variance that should be granted to in order to preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

The Board added the following condition to minimize adverse impact upon the neighborhood or community, specifically the impact on the rural character of the area.

Condition No. 1: There will be a minimum 250-foot setback for any principal residential building from the road center line.

MOTION: Grant Area Use Variance

Moved by Dean, seconded by Billington

The motion passed.

In favor: Billington, Bortz, Dean, Lamb, Hicks

MOTION: Close the public hearing

Moved by Bortz, seconded by Lamb

The motion passed.

In favor: Billington, Bortz, Dean, Lamb, Hicks

The public hearing was closed at 8:13pm.

BOARD BUSINESS

Training Requirements

Hicks reminded members of the training requirements for a BZA position—four hours every year. Members must complete a state-mandated training course in order to be reappointed. Hours can rollover if it has been taken more frequently, and hours are kept track of by submitting them to the Town Planner or Town Clerk. It is possible to take the training online.

Site Visits

Hicks asked members to weigh in on site visits. He suggested that they should be conducted for each appeal, after contacting the applicant. Bortz and Randall confirmed that the application for a variance allows for site inspections, and Randall said to be sure to mention if you go on a site visit so it can be recorded on the record. Site visits would occur after a call to the applicant so they knew to expect someone.

Conflicts of Interest

Hicks raised the issue of conflicts of interest. If there is a conflict of interest, or any doubt as to whether they may be one, Randall said Board members should recuse themselves. This means they would not participate in discussion or vote on an issue, although they may stay in the room if they so choose.

Voicing Opinions

Hicks asked members to feel empowered to voice their opinions on any issues that come up. He reminded members that this board is not a consensus body but a quorum body. That means three bodies must pass a motion for it to take effect. He asked that members feel free to lobby for a “no” vote even if they know it will pass; this will then go into the record. Bortz added that members should also speak up about adding any conditions they may wish to see on an appeal.

ADJOURNMENT

The meeting was adjourned at 8:31pm.

Alyssa de Villiers – Recording Secretary