



## The Town of Danby

1830 Danby Road  
Ithaca, NY 14850  
danby.ny.gov

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## Board of Zoning Appeals Agenda

Tuesday 28 February 2023 at 7:00PM

# FINAL

### PRESENT:

Betsy Lamb  
Tobias Dean  
Ted Jones  
Lew Billington (Zoom)

### ABSENT:

Earl Hicks

### OTHER ATTENDEES:

Town Planner	David West
Recording Secretary	Cindy Katz
Public (in-person)	Charles Guttman; Jeremy Thompson; Jeremy Knout; Sanford Miller; Marvin Oltz; John Vakiner; Andrew Purser; Andrew Davis; Natalia Santamaria
Zoom	Ted Crane; Andrew Cove & Deborah Montgomery; Joel Gagnon (Town Supervisor); Virginia Tesi; Leslie Conner (Town Board member), Katharine Hunter (Town Board member) Robert Goggs; Monica Vakiner; Marten Wegkamp

*This meeting was conducted in person with virtual access on the Zoom platform.*

*The meeting was called to order at 7:01 p.m.*

## 1. CALL TO ORDER/REVIEW

**MOTION** to make Betsy Lamb chair during this meeting due to absence of Hicks.

Moved by Jones, seconded by Dean

The motion passed.

In favor: Dean, Jones, Lamb, Billington

No addition or deletions made to the agenda.

## 2. APPROVAL OF MINUTES

No minutes for approval.

## 3. NEW BUSINESS

Lamb clarified that though there were only 4 of them present, they were still required to make a majority. She offered the applicants the option to pull their applications today in case they felt this left them at a disadvantage. None did.

Planner West wondered if they should change the order of appeals tonight. The Board elected to do that, and start with the East Miller application variance.

[VAR-2023-01](#) 229 E. Miller, **Parcel:** 7.-1-43.42 **Applicant:** Jeremy Knout

**Anticipated Action:** Approve or Deny Variance

**SEQR:** Granting or Denying this Area Variance is a Type 2 Action requiring no further review

**Applicant Request:** The applicant requests a variance from the minimum lot size for 1 of 3 parcels in a 3 lot subdivision of the existing large lot as well as variance of the required lot depth to create a 3 acre parcel around the existing farmhouse.

### **Applicant's Description and Board Questions**

Applicant Knout approached the microphone, the map was displayed, and handouts were distributed to the BZA. He reviewed his goals. Lamb wondered why the applicant was putting in the variance and not the current owner of the land. Planner West said that anyone could put it in the appeal as long as the seller agreed. Lamb clarified with the seller - present at the meeting - that he did, in fact, consent.

Lamb asked why the terrain wouldn't allow for any other configuration of the land. He explained that with the terrain and all the hills and gullies, there is no other flat enough area. She wondered if the yellow lot could be expanded, and he responded that it could be, but that would result in lots neither of which met the required 10 acre minimum. They wondered if it was possible to add more to the pink lot in order to give each 10 acres.

Dean wondered how similar this request was to another recent appeal to create 4 lots up the road, none of which were 10 acres. Planner West explained this is different because the size of this original lot would allow for 8 separate parcels.

### **Public Comment**

*The public hearing was opened at 7:13 p.m.*

Planner West said he had not received any letters and they asked if anyone from the public or on Zoom would like to speak. Knout reviewed his neighbors and said he was not aware of any issues from them; many are friends. No comments were made.

*The public hearing closed at 7:14 p.m.*

### **Area Variance Findings & Decision**

The Board of Zoning Appeals considered the appeal of Jeremy Knout regarding the property at 229 East Miller (Tax parcel 7.-1-43.42) for an Area Variance from the zoning code section 602-5 that requires 10 acres and 600 ft depth for new lots in the R2 Residential Zone.

1. The Board agreed no undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties.

Billington wondered if the pink area becoming a flag lot would cause any issues. Planner West said it is permitted but could not be subdivided in the future. He sought clarification on directions. Lamb wondered about possible future building on the blue lot.

2. The Board agreed that the benefit sought by the applicant could not be achieved by a feasible alternative of the variance.

The Board agreed that there is not an alternative due to the topographical concerns, and that there would be no real way to the smaller lot up to the acreage required even if they did shave some land off the other parcels.

3. The Board agreed that the requested variance was substantial, noting that taking 10 acres and bringing it down to 3 does feel substantial.

However, Dean stated if you consider the total density and size of the larger lot it seems less substantial.

4. The Board agreed the variance would not have an adverse impact on the physical or environmental conditions in the neighborhoods.

They noted that nothing is changing from what is already present and no construction is planned.

5. The Board agreed that the difficulty was more or less self-created, noting however, that with the new zoning ordinances, there were no other options and that the terrain was very limited, and that it is often the case and not particularly significant that the problem was self-created.

Lamb wondered if they needed one or two variances. Planner West asked if they wanted to consider conditions, including one that the future number of subdivisions allowed would be a maximum of 6 lots for the blue (larger) lot. They agreed on that condition, clarifying that the total area for the 3 lots cannot be divided into more than 8 lots.

The BZA found a 7 acre and 500 ft depth from Section 602-5 were the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety, and welfare of the community because of all of the above discussed reasons and the following: granting the variance will not change the character of the neighborhood, topographical limitations preclude substantial changes to the proposal.

**MOTION** to pass Resolution 1 of 2023: The benefit to the applicant does outweigh the detriment to the neighborhood or community.

Moved by Jones, seconded by Dean.

**The motion passed.**

In favor: Billington, Lamb, Dean, Jones.

Lamb thanked the applicant for coming in person. Applicant asked what the next step is, and Planner West responded that the Planning Board will hold a hearing at the next meeting, do SEQRA, and then grant either preliminary or final approval.

[Appeal of Staff Use Determination for Tourist Home for SPR-2022-09 105 Beardsley Ln. Parcel: 2.-1-9.22](#)

[Link to Planning Board Folder Here](#)

**Anticipated Board action(s) this month:** Review request for appeal, Consider Recinding or Upholding Staff Use Determination

The Site Plan Review applicant would like to use their newly constructed home as a Tourist Home - a use allowed by site plan review in this zone. The appealing party believes that the proposed use does not meet the definition of a Tourist Home in the Town's zoning and is requesting review by the BZA.

Lamb reviewed the appeal and Planner West clarified that this is not a decision on if a

tourist home is permitted but rather if this particular house IS a tourist home. Lamb wondered if that meant the BZA had to therefore decide what the house is, if it is not a tourist house? Planner West clarified that there are two types of businesses for accommodation that are allowed in the town - tourist home, which is allowed in this zone, and hotel/motel/boarding home, which is not allowed in this zone. The appealing party believes, based on the definition of "tourist home" that this accommodation is NOT a tourist home but rather, a hotel/motel/boarding house.

Lamb read the definition of the tourist home and asked for the input of the person bringing the appeal, Virginia Tesi. Tesi did not respond and Planner West explained they had COVID. He offered to read their most recent letter, which was not included in the packet.

Ted Crane asked if he could speak first in order to attend another meeting. Lamb agreed.

### **Public Comment**

Crane said that he doesn't live near the house but would not want this to happen near where he lives. He agrees with the appealing party that the house's primary use is NOT as a primary dwelling for the owner. He noted that the applicant themselves has expressed that the "best part" of the house is not the part that the owner is using regularly but rather the part that will be rented. He thought David's list of other tourist houses was not relevant because there are too many differences. He went over why those examples were different and irrelevant. He mentioned that this area was made an agricultural zone, possibly to shield the neighborhood from 96B. When the applicant was given permission to build there, he claimed that the house would just be for him and his family. He noted a "pattern of changing needs" and unstated intent from the applicant, pointing that various people involved knew that this was designed to be a rental property from the start.

*The Public Hearing continued...*

Natalia Santamaria of 135 Beardsley Lane spoke on behalf of Tesi, reading portions of the letter recently submitted by Tesi.

Robert Goggs: Asked the board to ask for a reasonable interpretation of the zoning law, and that he supports this appeal. He believes it is more reasonable to view that a home using five of the more luxurious bedrooms in a seven bedroom home as rentals would make the rental the "primary" function of the house.

Andrew Cove stated that he sent a letter today. He pointed out that the Town zoning laws do not have a strict definition of primary and secondary, but common sense shows

that someone living in a two bedroom basement with only a kitchenette, but renting out an upstairs with a proper kitchen does not seem common sense that the rental be "secondary." He noted the attic cannot be "fitted at the top" according to Code Regulations. He noted that there is no definition of lodging houses in Danby zoning laws, so he's not sure why that was relevant. The way the applicant wants to use this house makes it a "boarding house" which is only permitted in Commercial Zone Z.

Deborah Montgomery, also on his Zoom spoke about the character of the neighborhood being damaged and feeling "scary" by having transient people coming in and out.

Attorney Guttman spoke on behalf of his client the applicant. He stated that how this impacts the neighborhood is not relevant to this appeal. That is something that the Planning Board considers in their Site Plan. Regarding "common sense": This is not a motel. Reminded folks that the question here is if this is a tourist house as defined by the Town Board.

Guttman reviewed the conditions of rental – only rented 180 days a year. This makes it a secondary use as a rental, because for 365 days a year, the applicant will be living there. He reviewed the layout of the house, where the applicant will live, and how the other floors will be used at various times during the year.

He brought up the rules regarding zoning laws when there is ambiguity. In those incidents, the ruling is supposed to go to the benefit of the land-owner.

Joel Gagnon, Town Supervisor, explained that the only thing that makes this an issue is that someone is going to be living in the house. If this was going to be a full rental, rented out completely, it would be permitted. The only question here is what kind of rental IS it then, since it is not a fully rented out space? He urged the BZA to look closely at Planner West's reasoning to make sure it does in fact fit the definition of a tourist home.

Andrew Pursuer: It seems clear the primary use is not a home and therefore it should be defined as a "boarding house." He wondered how the town can regulate the 180 days of rentals. He asked when the letter would be read and Lamb clarified it would be read after the Public Hearing was closed.

Virginia Tesi: Agreed with Guttman that this is similar to a bnb. However, a bnb can be a tourist home but it can ALSO be a boarding house bnb. Which one it is is dependent on the primary/secondary use distinction, and that is what she believes the question facing the BZA is. She disagreed with Gagnon's assessment that if the applicant were not living in the house it would be allowed. According to her, this statement is incorrect because this case is about a night to night rental for transient people - not a monthly or yearly rental. Nightly rentals, she believes, are only permitted in two designations. She believes

it is a misinterpretation to say nightly rentals are allowed in a building where the owner does not live. Perhaps this will change but as the code is now, this is what is there.

Montgomery: Intention can't be regulated and she wondered how those stipulations be enforced?

Guttman: Reiterated that this is about if this is a Tourist Home, not how the town chooses to enforce it., and that in a tourist home, vs a boarding home, the owner lives in the house, and that this is a tourist home because the owner will live there.

Tesi responded that yes, in a tourist house the owner must live there, whereas in a boarding home that is not required.

*The public hearing closed at 8:04 pm.*

### **Board Questions and Discussion:**

Planner West read the second letter sent by Virginia Tesi.

Lamb clarified that they have the choice of supporting or not supporting the appeal, and Planner West clarified their choices are 1. Reverse his interpretation of tourist house use 2. to affirm his interpretation was correct or 3. to modify it, saying it was mostly correct with a few changes they made make in this particular circumstance.

She asked if considering the impact on the neighborhood was relevant and Planer West said no, it is purely interpreting the code, and that in situations of ambiguity, you are supposed to rule in favor of the land-owner.

Dean disclosed that he had a telephone call with Montgomery who asked her if this would go to the BZA. At the time, he didn't think. She expressed to him many of the things that were said tonight and he didn't feel he needed to recuse himself as a result.

Billington noted the storied history of the building and code violations. He is currently in Maine and read all the material. Some questions that came up are we able to say that something is residency because someone decided to live in a basement? He heard many reasonable arguments here but he is not sure if they relate to the task at hand. He wondered how various conditions could be enforced or kept track of. If both tourist homes and boarding homes are allowed, what is the downside to the house becoming a boarding house? It seems unlikely they house can get moved or torn down. From what he sees, we are stuck with zoning as it is like it or not.

Dean said this is a new neighborhood, built in the last 15 years or so. he noted that a

variance was given to Ithaca College to build a large addition to accommodate large gatherings, mainly on weekends, and he doesn't know if that has a noticeable effect on the neighborhood. He noted that neighborhoods change over time, although he sympathizes with the neighborhood feeling threatened with this building. He cited the general principle that ambiguity must go in favor of property owner. It is clear that the Town must work on figuring this stuff out in the future but we have the BZA must rule on what is currently here. He referenced some other nearby locations where similar conversations are happening as well as in large cities. He said Planner West did a clear job of laying out the situation as it is now, like it or not, although he expressed sympathy for the neighbors concerns.

Jones stated that all the arguments heard today have validity but maybe not for this board. The BZA's scope is limited and he agrees with Dean and Billington what their job here is. The only questions is if the described use of the property falls into the category, and if there is ambiguity, it has to go in the favor of the land owner.

Lamb asked for clarification of 10 beds vs 10 people. Planner West clarified this is relevant to building code in R3 use type, there are one and two family homes as well as a lodging house. Some people were confused about a "lodging house" which is an owner-occupied house that includes no more than 5 rooms to rent and no more than 10 occupants. This is, however, the building code and is relevant to distinguish between using the residential building code or the general building code. Ten also comes up in tourist home use, in commercial zones A and B, tourist homes with up to 10 beds are allowed, and in C, more than 10 is allowed. Lamb also asked if there a legal definition of primary and secondary? Planner West said there is one for primary use, and that for a tourist house, the whole house is a "primary use." Part of that definition is that a rental for compensation is permitted provided that the use is "secondary" to the occupation of the home by a family - and what that "secondary" means is not further defined.

Possible findings Planner West cited (and posted on the screen for folks to see as he typed)

- Landowner indicated that rentals will only be for less than half a year
- BZA has previously issued variance to allow large gathering space in Ithaca college Home in this neighborhood
- Zoning is in derogation of common law and ambiguities must be construed in favor of property owner
- There is ambiguity in terms of how zoning defines Tourist home, specifically what "secondary" means.

Lamb added her feelings on how complex this proposal feels, and how she understands why the residents brought it as an appeal.

- The BZA does not have the authority to change the zoning, only to interpret at written, only question is whether or not the proposal, the Board agrees the



proposed use is a tourist home.

**MOTION** to pass Resolution 2 of 2023: To Affirm the staff use determination as it stands with the cited findings.

Moved by Jones.

Discussion:

Dean requested to add a recommendation that the Town Board and Planning Board formulate more specific requirements and definition and restrictions on tourist homes and airbnbs.

Billington asked to add a statement that the PB and TB come up with a method for enforcing what a tourist home owner has indicated they will do in order to keep the impact to a minimum. Dean wondered how practical that was or if a new zoning law amendment would actually be required for that.

West clarified that the Town Board has started a process to work on understanding what the residents want for short term rentals. He also clarified that currently you can buy a house and rent it out as an airbnb. He cited a past board decision on Olivia Vent's property, and that what current Supervisor Gagnon said is correct under current zoning – if the owner does not live on site, the house can be rented as an airbnb. He explained that a process is starting regarding accessory units on properties and that the Town Board is planning to expand that to include all short term rentals.

- BZA recommends that the Town Board and Planning Board work together to clarify definitions and enforcement for uses that include short term rentals.

Jones suggested the neighborhood look at adding covenants to the neighborhood as a way to prevent new houses being built as rentals. Planner West clarified they can sue people as individuals if they violate the covenants. Lamb added that the BZA is limited in their scope.

Motion seconded by Dean.

**The motion passed.**

In favor: Billington, Lamb, Dean, Jones

Lamb thanked everyone for attending and speaking to them.

**4. ADJOURNMENT**

*The meeting was adjourned at 8:41 p.m.*