



The Town of Danby

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

Board of Zoning Appeals Agenda

Tuesday 23 May 2023 at 7:00PM

Town of Danby Board of Zoning Appeals Minutes of Hearing and Meeting May 23 2023 DRAFT

PRESENT:

Toby Dean
Ted Jones
Betsy Lamb
Earl Hicks (Chair)

ABSENT:

Lew Billington

OTHER ATTENDEES:

Town Planner	David West
Recording Secretary	Cindy Katz
Public	Ashley & Jake Ulacco
Zoom	Leslie Connors (Town Board member), Katharine Hunter (Town Board member). Katharine & Tom Wouters, "iphone3", Brian

The meeting was called to order at 7:00 pm.

(1) AGENDA REVIEW

There were no additions or deletions to the agenda.

(2) MINUTES APPROVAL

MOTION: Approve the minutes from [April 2023](#)

Motion by Dean, seconded by Lamb.

The motion passed.

In favor: Hicks, Lamb, Dean. Abstained: Jones

(3) NEW BUSINESS

[VAR-2023-03](#) 2016 Danby Rd, **Parcel:** 14.-1-12.22

Applicant: Katherine & Tom Wouters **Anticipated Action:** Public Hearing, Review application; consider variance

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

Applicant Request: Variance from sideyard setback to allow replacement of existing ag. building with a new smaller building in essentially the same location, but no longer crossing the property line.

<https://workdrive.zohoexternal.com/external/bcece4c8a67d4998ddec9bd503f3d8540eb4cf8f730dacc2db41f3a6ffa9aef4>

Chair Hicks explained the process to the Applicants who joined via Zoom. He gave them the option, which they refused, to push the review back until a time when all BZA members were present if they thought that would increase their odds to receive a majority. He gave the BZA members a chance to recuse themselves and no one did.

He explained the 5 balancing tests which the Board uses in order to review the benefit to the applicants in light of the harm to the community or neighborhood. BZA member Lew Billington called on Chair Hicks phone and let Chair Hicks know he will not attend. Hicks asked the Applicants if there was anything related to the balancing questions they would like to add in addition to what they had already written.

Applicant's Description

Katherine explained how they purchased the land in April 2022 and are hoping to return it to some of its previous agricultural uses in the coming years. She explained that the machine shed there currently goes over the property line according to the survey they had done on the land. This shed is not structurally sound and needs to be demolished, and they would like to build a new shed there, smaller, but approximately on the same footprint, but not crossing the property boundary. They are starting with the shed because they have an immediate need to have a locked, large storage space on the land. In the future they will also have house plans.

They also detailed that there is an existing well and septic which they hope to use for livestock in the future. Other locations for this shed would not allow them to use the pre-existing septic and well infrastructure. They are hoping to make it

look nicer than it was previously.

Planner West put the map up on the large screen for all to see. They reviewed where the existing building is located and how it crosses the property line. Lamb asked why they were slightly pivoting the angle of the shed, and the Applicants replied that there was no reason. They clarified the size of the shed.

Public Comment

The Public Hearing was opened at 7:14pm.

Planner West confirmed there was no written correspondence and no phone calls. No one from the public or on Zoom wished to speak.

The Public Hearing was closed at 7:15 pm.

Board Questions & Discussion

Dean offered this was a clear-cut situation to remove that building. Chair Hicks sought clarification on how long ago they had purchased the property - about 1 year. The BZA remembered they had a hearing on subdividing the lot, which must have happened before the applicants purchased it. Lamb commented that there probably wasn't enough room to put a house on the front section of the property anyway. Chair Hicks clarified it was surveyed and asked if there was any agreement or dialogue with the other property owner. The Applicants replied they had not spoken with them. They discussed that the current foundation is a "block" and that it will be removed and replaced.

Chair Hicks asked what the purpose of the building would be – and the Applicants replied it would store a small tractor, other materials to care for animals, and also serve as weather protection and locked storage. There would also be a sink with water. Katharine said that the diagram in the BZA's packet shows what they plan on building, but it'll probably be a different color. It is a sort of pole barn kit, with a wood frame and posts.

Lamb wondered if the trees between the current shed and the property will be removed. The Applicants replied that they hope not, and they may do a hedge there. [Planner West later confirmed that some trees would need to be removed in order to properly take down the current structure.]

Area Variance Findings & Decision

The Board of Zoning Appeals considered the appeal of Katherine & Tom Wouters regarding the property at 2016 Danby Road (14.-1-12.22) for a minimum Area Variance of 45 ft to allow for the replacement of an existing agricultural building with a new smaller building from the zoning code section 601.7 that requires minimum side & rear yard depth of 50 feet in the Rural 1 Zone.

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

The Board agreed there would be a positive impact by putting in a new building and removing a dilapidated building, noting that the building is not even visible from the road or the neighboring house. Chair Hicks commented on the loss of a old agricultural building, something with historic value, but noted having a farm grow also is positive.

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

Jones asked for the acreage of the land and the reasoning behind the selection of this spot for the barn building. The land is 100 acres, and the main reason for using this spot is because of the ability to tie into already existing infrastructure [well and septic]. They agreed there are good reasons for the building to happen in the identified location, and the applicants clarified that they intend to establish a new well and septic for their house, once that project gets started. They commented the lay out is a bit tricky, it makes sense to keep the farm stuff together, and there aren't other feasible options.

3. The Board agreed the requested variance was substantial.

The variance is a positive improvement on the current situation, although, yes, it is substantial.

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

The variance would not have an adverse impact because the current building is a hazard. Chair Hicks wondered about the functioning of the current infrastructure there and whether it might have an environmental impact, but believed, for example, the septic system would need to be permitted. That would address any concerning issues if it had any. He wondered about lighting on the back of the structure, which may impact the neighbors or the road, and the applicants added that they had no plans to add lighting.

5. *The Board mostly that the alleged difficulty was not self-created.*

The building was already there and over the property line when the property was purchased. There really isn't another way to make the property work as a farm. Chair Hicks stated that the question is tricky and he does lean towards the problem being self-created.

Planner West added the Town does have a dark sky compliance law and that if the Applicants have any questions about that they can reach out to him.

Hicks wondered if the existing barn material could be used in some way. The Applicants replied that they are hoping to preserve it. The BZA then discussed if there could be any conditions for this variance. Jones asked if the trees were on their land or the neighbors, and they are actually on the neighbors' property. West made sure it was understood that some trees would have to be removed.

MOTION: To Pass Resolution 4 of 2023 that the Benefit to the Applicant does Outweigh the Detriment to the Neighborhood or Community

A variance of 45 feet from section 601.7 of the Zoning Code is 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 greater setback would require significant cost and additional infrastructure extension or dramatic rearranging of the site.

Moved by Dean, seconded by Lamb.

The motion passed.

In favor: Dean, Jones, Lamb, Hicks

Lamb asked what they might grow, and the Applicants responded that they may raise sheep. Hicks explained the purpose of the set-backs as a way to benefit both them and the neighbors. Hicks encouraged the Applicants to meet their neighbors and to explain this to them in case they wonder why they are building so close to the boundaries. If the neighbors have further questions they should reach out to Planner West.

[VAR-2023-04](#) Hill Rd, Parcel: 20.-1-25.22

Applicant: Ashley Ulacco **Anticipated Action:** Public Hearing, Review application; consider variance

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

Applicant Request: Variance from minimum lot size to allow division of a 7 acre lot from a 60 acre lot where 10 acres is the minimum lot size.

<https://workdrive.zohoexternal.com/external/5363d2f8d84ce75b1b81126ab16677c9eebc6b702ed923bd8d490c1a81c12dca>

The applicants approached the microphone. Chair Hicks reviewed the case and asked if the owners of the sixty acre lot are here and they were not. He clarified that this is a variance, but if given, they will also need to go to the Planning Board for a subdivision. Planner West clarified that the minimum lot size for the sixty acre parcel is ten acres. If you remove the requested seven acre lot from the sixty acre lot, only five lots would be left. In this sense, the request does not create any additional lots.

Planner West next put up the parcel map and they discussed the location of the different lots -- where this flag lot would be, where the lot they currently own is, and why they don't want to combine the two lots together.

Chair Hicks next checked that none of the BZA members wanted to recuse themselves, and asked the Applicants if they wished to proceed despite the fact that one BZA member was not present. They confirmed that they would like to proceed.

The Applicants confirmed they understood the balancing tests and Chair Hicks asked if they had anything to add in regards to them.

Jake spoke and stated they've been on 220 S Danby for ten years, and they have always wanted the land behind them and that they see it as an opportunity to invest. What is key is that it has road frontage, and the current configuration of the land is the only way to achieve such. They also stated that they cannot afford to purchase ten acres, but that seven acres is possible for them. They would like to own the lot but not combine it to their current parcel, despite the two abutting one another.

They have been speaking to Doug Mackie, who owns the 60 acre lot. Lamb asked why they didn't want to combine the two parcels. They answered that because it is such a substantial investment for them that they like the idea of having it separate in case they ever need to sell it. Thus, having frontage would be important. Lamb pointed out that if the two parcels were combined, they still would not be able to subdivide because the acreage would not be enough. Planner West added that having two parcels would make their taxes higher than if they annexed/combined. Dean asked if there was a lane, and Jones commented that the land where the flag would be is quite dry and they should be

able to build a drive-way there. Hicks asked about the name on the map and the applicants verified the name there was her maiden name. They clarified that they currently have six acres, that they love that spot back there, and that it would be an investment for the family future with 3 young children.

Public Comment

The public hearing was opened at 7:57.

West said there was one phone call from a Hill Road neighbor who expressed no concerns with the proposal. Dean commented on how he liked driving there and seeing the pole barn that the BZA previously gave approval for. He also spoke to a neighbor, who voiced no concern.

Brian Pectin (spelling of last name unknown) on Zoom commented that he was concerned about the drive-way. Lamb asked if there was an immediate plan to make that driveway, and there is not. Brian was not able to unmute and Planner West gave him the number to call. Chair Hicks asked if the minimum of 10 acres requires frontage, and the answer is no.

Brian called in and expressed his concerned about being able to see the driveway from 16 Hill Road. He also questioned what a potential driveway might do to the water from the pond. Jones responded that the pond is not fed from where that driveway is – that that land is very dry. The BZA looked at the map and the elevation lines and thought that in theory water could flow from the higher elevation over to the where the driveway might be. He asked how long that flagpole would be – it would be about 1000 feet. He also asked about trees.

The Public Hearing closed at 8:09 pm.

Board Questions and Discussion

Dean commented on how he heard Brian's concerns, and commented that the family is not currently planning on building a driveway, and there is the chance that it could happen anyway, even if these Applicants did not buy the land. Lamb wondered if the water concerns would be a part of the subdivision review, and Planner West responded that was unlikely.

Chair Hicks asked for an explanation of the road frontage requirement for this zone (Rural 1) and Planner West replied that there isn't one; there is a state rule that requires 15 feet. Hicks imagined if one massive lot on most of the frontage could be built, leaving another potential five parcels, each with 15 feet of frontage, taking up a total of sixty feet. This sixty feet with five parcels would be permitted without a variance as

compared to the current ask, which is for a one parcel with 75 feet of frontage. Jones shared a calculation he did showing that if the Applicants did in fact just purchase ten acres (and hence not need a variance), the extra acreage would not be enough to negate the need for a drive-way; they would still need to build a long driveway, which would potentially be visible to neighbors. They concluded that one way or another a driveway would need to be put there, with or without a variance.

Lamb asked what the alternatives are: 1. Buying more than 7 acres 2. Combining the parcels. They asked how long the land has been on the market (the 60 acres), and the Applicants were not sure. They had discussed the cost of 10 acres with the owner but it wasn't affordable for them. Hicks thought it would be helpful if the landowner was here. He wondered if they should table it until the landowner could come.

Lamb wondered if Mackie (the landowner) understood that selling this parcel will not increase his number of potential parcels. Planner West said that he had spoken to him about combining the two lots, but the balance is how much is the damage to the neighborhood vs the benefit to the Applicant for paying less for the lot. Chair Hicks wondered if conditions could be added to the remaining acreage after the potential subdivision. They discussed the various configurations and potential paths to use that acreage.

They stated that if the lots were attached to each other in this zone, they could have two houses on the parcel, but they could not sell one.

Chair Hicks asked how they arrived at buying seven acres from Mackie, and the Applicant said it was partially to align with the current space they are using, and then they tacked on a few more to get to seven. The BZA discussed how pricing works for acreage and Board members expressed their discomfort at discussing the cost. Planner West reminded the BZA to think about the benefits of the variance, and in this case, the benefit to the applicants is paying less.

Other nearby smaller lots in that area were brought up and Planner West clarified that those smaller ones are in a different zone, not in Rural 1. They reviewed the different zones on the map. (Note: The Applicants currently owned parcel is in the Low Density Residential Zone.)

The Applicant sought to understand why a nearby small lot was permitted and Planner West clarified that it was there before the zoning was changed; before the zoning was changed, it had all been a "low density zone."

Jones clarified his math from before about frontage, as he had made a mistake.

Area Variance Findings and Decision

The BZA considered the appeal of Ashley Ulacco regarding the property at Hill Road for an Area Variance of three acres to allow for division of a seven acre lot from a sixty acre lot in the Rural 1 Zone where ten acres is the minimum lot size.

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

The Board did not see a large impact by varying the sizes of the parcel; a lot will be there, whether it will be seven acres or ten acres. They stated that shrubs could be planted along the driveway.

2. The Board saw that the benefit sought by the Applicant could be achieved by a feasible alternative to the variance, although the economics of the alternative posed a significant barrier to them.

Various other options include: Annexing the seven acres with their current parcel and therefore not keeping it as an individual lot is an option, though it isn't the desired one by the Applicants. They could also purchase a larger lot but that isn't an economically feasible option for the Applicants.

3. The Board agreed that the variance is substantial.

A seven acre lot is 30% less than the required size of a lot in this zone.

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

The Board noted there would be a slight impact due to breaking up the parcel as well as imperviousness impact from building the long drive-way, but such would still be the case even if the lot was 10 acres and did not require a variance. The variance itself does not significantly increase impact.

5. The Board mostly agreed that the alleged difficulty was self-created.

The price of the land and financial reality is not self created. However, other aspects of the application are, including the Applicants' desire to not annex the two parcels, and them seeking a variance in order to save money by purchasing seven acres instead of ten.

The Board discussed potential conditions and wondered if they could put a condition on a piece of land when the owner of that land is not the applicant. Planner West responded that they could, because that person can choose to not sell the parcel or go through with the subdivision.

BZA members expressed concerns about setting a precedent saying that the financial benefit to pay less is an important enough benefit to the applicant that it can be granted. They wondered if another buyer could come and also want to purchase a seven acre lot because ten acres was too expensive for them (or something similar). If that person were denied, they could have a grounds to appeal that decision based on the precedence of this one, and that could be a very costly process to the Town. One extenuating circumstance is that the land these Applicants are seeking is adjacent to their current property, but at the same time, they are not seeking to combine the two parcels, which would be permitted. The Board asked if the benefit to the Applicant outweigh the detriment to the neighborhood but also the town?

Lamb stated feeling uncomfortable about granting the variance for an entirely economic reason. The BZA members tried to see if there was another reason for the variance aside from economic reasons. Hicks wondered if they could table this and discuss with the land-owner. Planner West wondered what they would like to get out of such a conversation, noting that you cannot condition the land-owner to say that no one else will apply for a variance. Jones explained why the very real reason of "we can't afford it" cannot work as a rationale for a variance. That would open the door allowing anyone else to come for a variance for that same reasoning. Planner West recalled a previously denied application to the BZA at the beginning of the year where someone tried to subdivide a parcel more than what the zoning allowed so that they would maximize their profit. They speculated about the reasoning in this case being that the family needs more space to grow into, but the fact that this family is not annexing the land to their current land - which would not require a variance - complicates it. Dean clarified that if the land was annexed, they still would not be able to subdivide in the future.

The BZA continued to contemplate how they could avoid setting precedence while approving this variance. Jones stated that perhaps they need to accept the fact that this

isn't going to work.

Applicant said that he understood that this could come back to bite them, but what about the future of his kids? Lamb asked if the BZA said no, would the Applicants still get the land and annex it? They replied no, probably not. Dean wondered if they could work something out with the owner.

MOTION: To Pass Resolution 5 of 2023: The Benefit to the Applicant DOES NOT Outweigh the Detriment to the Neighborhood or Community and Therefore the Variance Request is Denied.

Moved by Lamb, seconded by Jones.

The motion passed.

In favor: Jones, Lamb, Hicks

Against: Dean

The BZA apologized to the Applicants and said they understood their plight and their frustration. They advised the Applicants to try to go work things out with the land-owner. The Applicants left.

The BZA discussed an upcoming training.

(4.) ADJOURNMENT

The meeting was adjourned at 9:24pm.