



## The Town of Danby

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

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## Board of Zoning Appeals Minutes

Tuesday 28 Nov 2023 at 7:00PM

### PRESENT:

Lew Billington  
Tobias Dean  
Ted Jones (via Zoom)  
Betsy Lamb  
Earl Hicks (chair)

### OTHER ATTENDEES:

Town Planner: Greg Hutnik  
Recording Secretary: Cindy Katz  
Public: Olivia Vent; Christel Trutmann  
Zoom: Ted Crane; Katharine Hunter (Town Board Member);  
Zachary Larkins; Heather Coffey; Joel Gagnon (Town  
Supervisor)

*The meeting was conducted in-person at Town Hall and virtually via the Zoom platform*

*The meeting started at 7:04 p.m with the BZA members beginning to discuss business.*

## DRAFT

### 1. AGENDA REVIEW

There were no additions or deletions to the agenda at that time.

Chair Hicks introduced and welcomed the new Town Planner, Greg Hutnik, to the Board of Zoning Appeals ("BZA"). Chair Hicks appreciated the work Planner Hutnik had done in preparing for the meeting. Billington asked if phone numbers for applicants could be included and Planner Hutnik replied he could always check with them. He also clarified that by signing the application, the applicants are granting the BZA the right to enter the property, adding that a courtesy call to let them know beforehand is always appreciated. They discussed the laws regarding how many BZA members can legally gather at a given time.

Planner Hutnik explained how he previewed some potential tweaks for Town Zoning Ordinance to the Town Board last week. These tweaks fall into three buckets: 1. Needed changes; 2. Suggestions and; 3. Larger topics to be considered by committee or with a Comprehensive Plan Update, slated for discussion in the New Year. Planner Hutnik will send them the memo and would be happy to hear feedback from them regarding it. Chair Hicks wondered about the status of their training hours, as they are required four hours a year. They discussed whose positions on the board are expiring with the New Year, and their plans to continue on.

*Chair Hicks called the meeting to order at 7:16 p.m.*

## **2. APPROVAL OF MINUTES FROM [May 2023](#))**

**MOTION:** Approve the minutes from May 2023

Moved by Lamb, seconded by Dean

They discussed if Jones, who was over Zoom, could vote and concluded that he could because he is not completing quorum.

**The motion passed.**

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

## **3. NEW BUSINESS**

They decided to reverse the order of the application review because the first applicant (486 Nelson Road) was not present. They began with 1843 Danby Road.

**[VAR-2023-06 & VAR -2023-07](#) 1843 Danby Road Parcel: 10.-1-49.2**

**Applicant:** Olivia Vent **Anticipated Action:** Public Hearing, Review application; consider variances

**SEQR:** Granting or Denying these Area Variances are Type 2 Actions requiring no further review

**Applicant Request:** Applicant is requesting two separate Area Variances. VAR-2023-06 is to allow a front maximum setback of 68 feet and a side setback of 9 feet 3 inches for an existing structure planned for renovation into a market/cafe. The Hamlet Center Zone District requires a 20-foot maximum front setback and a 10-foot minimum side setback regardless whether the building is existing or newly constructed

Chair Hicks reviewed the overall application and the variances requested. Both are Type II and require no further environmental review under the State Environmental Quality

Review Act (SEQRA). The BZA reviewed their packets and a diagram was put up on the large screen. Chair Hicks provided an overview of the process and requested the Applicants share any information that may not have been clear in their application or that may be helpful. Following that, there will be a Public Hearing and then they will go through the standard five balancing questions, which will be followed by a vote. Chair Hicks disclosed he is a close neighbor of the Applicant, but is not concerned about bias or conflict of interest in regards to his ability to make fair and unbiased decisions in his role as BZA Chair.

### **Applicant's Description**

The Applicant spoke on how an objective in the town is to have a meeting place, a market or café of sorts, as a way to help create a sense of community in Danby. This has been a hope of hers to do on her properties that she has been holding onto since 2008. Currently, the properties are providing affordable housing. She is pleased for them to support multi-use. She stated this has been a long and time consuming process, but she is going ahead with it because she has found a very welcoming and professional proprietor for the project. They settled on this specific building, which used to be a machine shed, after consulting with engineers and architects. One snag is that the Health Department has asked them to come up with a new septic design, which they are moving forward with. They have begun renovations and have discussed the project with the Planning Board.

Planner Hutnik put up a few images on the screen, including an aerial view, that were newly submitted by Vent. She noted she had not sent the planner the most recent map which shows traffic flow arrows, although the one they were looking at is still a new diagram created after discussion with the Planning Board to show more details in regards to traffic and parking.

Lamb wondered about parking, right of way in the road, and if parking would be in it, as that area belongs to the Highway. They discussed the dimensions and lay-out of the road and Planner Hutnik clarified that he is confident that the parking would be on the Applicant's property and there is ample space.

### **Public Comment:**

*Public Hearing was opened at 7:37 p.m.*

No one spoke. The BZA confirmed with the planner that there was no correspondence, only a comment from Tompkins County related to the septic system. In that, the county wrote that increased septic use could result in septic failing sooner than expected. Hence, they recommend the Applicants work on a new design in case that happens. Planner Hutnik stated that they are doing this.

Billington commented he "overheard" concerns from people at the nearby church about how the church could potentially be used as a turn-around or for overflow parking. Planner Hutnik commented that this variance is about the *location* of the parking, not whether or not parking will exist. There will be parking there as the Hamlet Center Zone District does not regulate parking numbers; therefore this concern is not relevant to the variance applied for.

Chair Hicks asked if there is a deadline for public comments and it was at 4pm today. Chair Hicks read from the Zoning Code about the Hamlet Center Zone. He asked about the Habitat Corridor Overlay District, which part of the property is in. This zone requires Site Plan Review, which is happening through the Planning Board.

The BZA asked if Vent had anything else to say. She explained this is the first project like this in Danby. She is concerned about traffic for tenants, about her insurance and her assessment, and what they will do if they need to expand the space. She noted this is a very fluid situation with a goal of getting started and moving through it all step-by-step. Hopefully the result will be something very positive.

*Public hearing was closed 7:46 p.m.*

## **Board Questions and Discussion**

Chair Hicks inquired about the Applicant's architect. He knew of the people the Applicant had used and was pleased to see they are still in high regard in the field. He appreciates that the town zoning includes the idea of the parking behind (or, in this case, the side) of a business as opposed to a large parking lot in front.

Lamb asked about the small area off the circle marked with 15 feet. How will it be used? The Applicant clarified that it will have to remain clear for deliveries or for the tenants' use. There is also the potential of using an existing cut-in on the northern side of 1839 Danby Road and creating a dedicated parking spot there for tenant use. That would free up space, though would require tenants to walk further.

They wondered what might happen if the parking was moved further east, noting how that would influence the ability to include diagonal parking. Vent added that currently there is a garden and fence providing some visual separation between the parking lot/market and the tenants' privacy. Kartik, the manager, of the market, is also interested in adding picnic tables further east near the market, so there is a desire to preserve that green space. Chair Hicks inquired about the wire inside the 43 foot marked area in the circle and the Applicant explained that area will be landscaped and the wire protected.

Chair Hicks wondered what would happen if the property to the north was sold. Vent

replied that if she sold, she would subdivide so the circular driveway would be entirely in the main parcel. He discussed his concerns about "road creep" and that this allows people to pull out easily into traffic without backing out.

Billington brought up how ideas differ within the town about what people want to see in the Hamlet, and Dean inquired about the current regulations and potential changes to the current regulations regarding set-backs. Planner Hutnik explained how there are thoughts that perhaps the maximum set-back permitted in the Hamlet ought to be reconsidered, with residential and rehabilitated buildings receiving an exemption, as they are in-line with the town's environmental goals. Lamb clarified that this variance will cover both set-back requirements.

Chair Hicks wondered if the Planning Board could give a recommendation for providing this variance. Planner Hutnik stated that the Planning Board is in agreement that a variance would be needed, but that they cannot influence the BZA in granting one, and explained how the Applicant went already to the PB for a general review and agreement to apply for variances, which they gave, and that they will be looking to provide formal approval to the Site Plan at their next meeting. Without these two variances, no approval can be granted.

The BZA decided to go through the balancing tests for each variance, beginning with the set-back variance. Chair Hicks read off the tests.

### **Area Variance Findings and Decision**

The Board of Zoning Appeals considered the appeal of Olivia Vent regarding the property at 1843 Danby Road for an Area Variance from the zoning code section 605 (5)(a,b) that requires 10 foot side setbacks and 20 foot maximum front setbacks in the Hamlet Center Zone District.

1. The Board agreed that no undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties.
2. The Board agreed that the benefits sought by the Applicant could not be achieved by a feasible alternative of the variance because the structure is an already existing one.
3. The Board mostly agreed that the requested variance was substantial.  
They noted that the side set-up variance was not substantial, with Dean noting that the front set-back would be permitted under the proposed changes to the zoning; Chair Hicks noted that even if a request is substantial it does not pull the plug on the request.

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

They noted the landscaping would improve the physical condition.

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

They pointed out that the building existed here previously before any of this, including the code, thereby making this not self-created.

Planner Hutnik commented that the second variance relates to the decision on this one.

**The BZA found that an Area Variance of less than 1 foot for the side setbacks and 48 feet for the front maximum setback from section 605(5)(a,b) of the Zoning Code was 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 the above discussed reasons and the following: the structure already exists. No conditions were given.**

**MOTION** To Pass Resolution 6 of 2023: The Benefit to the Applicant does outweigh the detriment to the neighborhood or community.

Moved by Lamb, seconded by Dean.

**The Motion passed.**

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

They moved on to the second variance requested by the same Applicant, going directly into the balancing tests. The Public Hearing was held earlier during the meeting.

[VAR-2023-07](#) 1843 Danby Road **Parcel:** 10.-1-49.2

**Applicant:** Olivia Vent **Anticipated Action:** Public Hearing, Review application; consider variances

**SEQR:** Granting or Denying these Area Variances are Type 2 Actions requiring no further review

**Applicant Request:** To allow a parking lot between the street and the existing structure planned for renovation into a market/cafe.

#### **Area Variance Findings and Discussion:**

The Board of Zoning Appeals considered the appeal of Olivia Vent regarding the property at 1843 Danby Road for an Area Variance from the zoning code Section 510(5) and 705 (4) to allow a parking area in the front yard of a commercially used building in the Hamlet Center Zone District.

1. **The Board agreed that no undesirable change would be produced in the character of**

**the neighborhood or a detriment to nearby properties.**

They noted that a visual barrier will mitigate any negative changes and that a parking lot already exists across the street for another business. They discussed if overflow parking could be at nearby Dotson Park, with folks walking to the market via the shoulder in the road. Hicks inquired what the max number allowed in the building would be, and what the plan for overflow parking will be. Applicant Vent replied that this will be something they will have to look into in the future.

2. The Board agreed that the benefits sought by the Applicant could not be achieved by a feasible alternative to the variance.

They noted that an alternative would not be as convenient to this plan. Billington noted that if the business is successful, down the line a new plan for additional parking may be required. They also noted that the septic behind the building complicates the finding of another feasible alternative spot.

3. The Board mostly agreed that the requested variance was substantial.

Planner Hutnik clarified that "substantial" can be viewed through the lens of dimensions as well as through the lens of impact. What would the impact of this location in the rear vs the impact of it being located in the front? Lamb commented that yes, it is substantial but not a dealbreaker. Dean and Billington agreed; Jones believed it was not substantial. Hicks concluded he did not think it was substantial because the view of the market was not impacted.

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

Jones noted that the driveway is already in existence without an environmental impact, so adding in a few parking spaces will not radically alter that. Lamb noted that, assuming drainage and care for water impact will be considered, the impact of five parking spaces would be minimal. Planner Hutnik commented that impact could be substantial if this were a steep area, but this is not the case. He also added this parking area is outside of the overlay area, resulting in less impact. Dean agreed that the impact was minimal, but noted that if not enough parking were present, folks may try to park on the grass in the middle of the semi-circle.

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

They discussed the wording of the variance, so as to be clear. Chair Hicks questioned if this parking lot was a "front-yard" or "side-yard." The Planner gave the definition of a front yard as being in the front plane of the building extending across the property line and to the road, clarifying it was not the front area extending from out of the front door.

Billington wondered if "front yard" is the correct and clear language to use. Planner Hutnik recommended not using "side" and explained that "front yard" is the language used in the town zoning code, and is hence the language the BZA is to use to interpret the code with. They discussed from which property the front yard was to be measured, as the different structures sit on different planes despite being the same parcel.

They continued to discuss the wording of the variance. Chair Hicks read aloud some drafts he composed. They continued to seek clarity regarding the front yard vs side yard. Planner Hutnik reviewed his thinking for them -- explaining that he elected to refer to this parking lot as in the "front yard" in relation to the market itself, which is the closest building to it and of the same use. Therefore, a variance was required. The other option could have been to measure from the multifamily unit further to the south, which is also on the same parcel, but much closer to the street. In that scenario, the parking lot in discussion would have not been a front yard, but that building was further away, not of the same use, and could potentially be subdivided out from the market/parking lot grouping. Planner Hutnik believes this approach adds to the cohesion of the parcel.

Planner Hutnik suggested that allowing the parking in front of an existing building in this Hamlet neighborhood area would encourage compactness and could be more environmentally friendly than creating more parking behind the building, nearer to the overlay district. He addressed the concern of precedent, and stated that it is possible that another existing building in the Hamlet area may also want to become commercial and have parking in front of their building. It may, in fact, make sense for them because they may also have a deep lot. All cases are unique.

Jones wondered if the language could be interpreted to permit parking in the turnaround half circle. They discussed if that ought to be a condition or not, and decided to leave it out because they are not designing the parking lot.

The BZA found that an Area Variance allowing a parking in the frontyard of a commercially used building from section 510(5) and 705 (4) of the zoning code was 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 the building already exists beyond the maximum setbacks, and there are no feasible alternatives.

**MOTION:** To Pass Resolution 7 of 2023: The Benefit to the Applicant does outweigh the detriment to the neighborhood or community.

**Moved by Lamb, seconded by Billington**

**The Motion passed.**

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



They reiterated with the Applicant that the property, with its various planes and mixed uses, was a complex one, and even the Town's attorney agreed. They discussed where the frontyard is now on this property with various buildings, and how that would relate if they tried to restore the barn for additional uses in the future. They discussed what additional work may also be done on the property as well as the engineering reports regarding the sewer study for the town. Supervisor Gagnon spoke from Zoom about the potential of a gravity fed system and its high cost vs the density limiting factor of each parcel having a well and a septic system. He wondered what alternatives may be acceptable to the health department in regards to a shared system owned by the town. The town is looking into these things and hoping to have answers by April.

[VAR-2023-05](#) 486 Nelson Road, **Parcel:** 4.-1-51.1

**Applicant:** Lindsey L Johnson (Attorney) on behalf of George & Grace Payton **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:** Applicant is requesting a 6-foot side setback from the existing house in order to rectify the encroachment of the current lot line through the house. The Low Density Residential Zone District requires a 50-foot side setback.

Hicks reviewed the application. The Applicant wishes to adjust the lot line in order to fix the encroachment of the house so they can sell the lot to their son. BZA members wondered if it was required that the applicants have someone present? While the application does state that the applicant or a representative needs to be present, Planner Hutnik clarified that if that is not in the zoning code, then he thinks the decision to proceed is at the digression of the BZA.

Lamb wondered why they choose the line they choose, why just 6 feet and not more? Planner Hutnik said at first it was just adjusting a lot line, which is an annexation that the planner can do himself. They sent "him the survey, because the line does not conform with the standards, even though it would conform *more* than it did before. He added that he had considered that they had already paid for the survey, he checked with code enforcement that the minimum required is 5 feet from the lot line, and he felt that this ask was the minimum required in order to meet the standard. They examined the map and confirmed that the building code was met.

Planner Hutnik double checked that the Applicants presence is not required by law. The Planning Secretary confirmed that the applicants were on the list that was sent the

agenda so they knew the meeting was happening. Planner Hutnik did not see anything in the law. There were no letters or correspondence about the variance, and he recommended they move forward. He explained that the BZA could not vote *against* the variance because the applicants were not present. Lamb stated it would be good to make sure that it is communicated to the people that they be here, as it puts them at a disadvantage to not be present. Planner Hutnik agreed.

There were no concerns communicated in writing and the county was notified as required but had no concerns. This variance would not have a bearing on a future sale of the properties.

### **Public Comment**

*The Public Hearing was opened at 9:35 p.m*

No one spoke.

*The Public Hearing was closed at 9:35 p.m.*

### **Area Variance Findings and Decision**

The Board of Zoning Appeals considered the appeal of Lindsey L Johnson (Attorney) on behalf of George & Grace regarding the property at 486 Nelson Road for an Area Variance from the zoning code section 603(6)(b) that requires a 50 foot sideyard setback in the Low Density Residential zone.

1. The Board agreed no undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties.  
The houses already are there.
2. The Board agree that the benefit sought by the applicant could not be achieved by a feasible alternative of the variance.  
While they could add additional feet to the variance, such would still require a variance. There is no alternative that would eliminate the need for a variance.
3. The Board mostly agreed that the request was substantial.  
Fifty feet is substantial. Jones stated that even if fifty is substantial, the request itself is not substantial.
4. The Board agree that the variance would not have an adverse impact on the physical or environmental conditions in the neighborhood.
5. The Board mostly agreed that the alleged difficulty was self-created.  
Either the house was built incorrectly or it was surveyed wrong. The BZA wondered when the house was built. Even if this is self-created, the variance will get the house into compliance.

The BZA found that an Area Variance of 44 feet from section 603(6)b of the Zoning Code was 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 a setback of six feet is the minimum setback that comfortably meets the Building Code's requirement of lot line separation from a structure.

**MOTION:** To Pass Resolution 8 of 2023: The Benefit to the Applicant does outweigh the detriment to the neighborhood or community.

Moved by Lamb, seconded by Dean.

The motion passed.

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

#### **4. ADJOURNMENT**