

Town of Danby Board of Zoning Appeals
Minutes of Hearing and Meeting
October 26, 2021
DRAFT

PRESENT:

Lew Billington
Toby Dean
Betsy Lamb
Earl Hicks

OTHER ATTENDEES:

Town Planner David West
Recording Secretary Alyssa de Villiers
Public Katharine Hunter, Tom Mullen, Kenn Young, Anon

This meeting was conducted virtually on the Zoom platform.

The meeting was opened at 7:01 p.m.

MEETING WITH STAFF (TOWN PLANNER)

Planner West reminded the Board there is a full draft of the zoning update available; he is integrating comments and will come out with a second draft soon. He expected more variances would be coming before the Board soon. Chair Hicks asked if there were any applicants for the open BZA position; West did not know of any. Hicks requested that the applicant's phone number be included on the application form.

The meeting was called to order at 7:10 p.m.

MINUTES APPROVAL

MOTION: Approve the minutes from September 28, 2021

Moved by Lamb, seconded by Dean

The motion passed.

In favor: Billington, Dean, Lamb, Hicks

NEW BUSINESS

Because neither the applicant nor a representative was present for 2016 Danby Rd. to start, the order of cases on the agenda was switched.

Consider Area Variance

Project: Young Barn Conversion– Lot area, Side Yard, Rear Yard Area Variance

Location: 1428-30 Danby Rd. Parcel 2.-1-26.1

Applicant: Kenneth Young

Anticipated Board action(s) this month: Application Review, Public Hearing, Vote on variance

Project Description: The applicant proposes to convert an existing barn into the second residence on the lot. Adding a second dwelling on a lot requires double the lot area under Section 511 of the zoning code (a requirement for 4 acres minimum) and must meet setbacks under Section 600-6. The applicant requests variance to allow a second dwelling on the 2.517 acre parcel with a rear setback of 30' and a side setback of 26'.

Per the State Environmental Quality Review Act (SEQRA), as well as Local Law #2 of 1991, (Providing for Environmental Review in the Town of Danby), the action is considered a Type 2 Action. No further environmental review is required.

Per an intermunicipal agreement between Tompkins County and the Town of Danby, the proposed action is exempt from county review under New York State General Municipal Law Section 239.

Chair Hicks confirmed no Board members had a conflict of interest. He noted that most members had conducted site visits. He explained to the applicant that they were currently four members and to grant the variance would require a majority of the full Board of five members. He also explained the Board's process.

Applicant's Description

Mr. Young said the property consists of a house and a barn on 2.5+ acres; it is deficient by about 1.5 acres. He felt it was of minimal impact to the neighborhood because there are significant elevation changes and a hedgerow/tree line that disguise the property. The barn is an existing building, which you mostly cannot see from the road, and what you can see is screened with a trellis. The property is 100% solar-powered. His goal is to convert the existing shell of the building to a residence, 3200 sq. ft., with a garage attached. He thought it would have very little impact on the neighbors. On three sides are the Wilcox family. He has spoken with them about buying some property; they were not interested but were helpful in providing information and discussing alternatives. He felt it was not a big ask despite seeming like a large percentage of deficiency.

Chair Hicks pointed out that the Board would not be granting the permit to build a house by granting any variances, and the building as it stands now is considered an accessory building. He asked about garages under the proposed zoning update, and Planner West said a garage will continue to be an accessory building, but there will be a limit on the size and number of garages. Hicks noted that any decision would be made on existing code.

The public hearing was opened at 7:42 p.m.

Public Comment

No members of the public spoke during the public hearing. Hicks confirmed with West that no written comments had been received.

The public hearing was closed at 7:45 p.m.

Board Questions and Discussion

Betsy Lamb asked if the footprint of the house would be the same as the footprint of the garage, and Mr. Young said that was correct. Toby Dean asked about the septic system's location. Mr. Young said he was not 100% sure, but he intends to have a separate well and septic system for the barn if he is allowed to develop it. Dean asked if anyone was living there, and Mr. Young said no, it is a storage facility currently.

Dean confirmed that Mr. Young would need a special permit to build a new building. Planner West said a second dwelling requires two times the area and the required setbacks, i.e., that the property would be able to be subdivided. West read Section 511 out loud and said the variance being requested is to have 2.517 acres instead of 4. The distance between buildings is adequate. Hicks asked whether the granting of a special permit creates a mechanism for the property to be subdivided more easily. West said it does not. If you do not have a requirement like Section 511, people may put two dwellings on a lot closer than you allow and then want to subdivide.

Lew Billington asked if the garage had been built prior to the current zoning and whether it met code for a house then. Lamb pointed out that as an accessory building it still meets code, just not as a house. Mr. Young thought it was built in the late '60s/early '70s. Hicks felt there was a difference between a new structure being built versus already being there in terms of community and environmental impact. Lamb added that, since it will be the same height and dimensions, the building would not become more visible by being turned into a house. Dean agreed but thought the lot size would be a substantial variance. Mr. Young said setbacks often act to shield a house from neighbors, but in this case the property's geographic features do that, so the amount of property is the bigger issue (as opposed to the variance for setbacks).

Lamb said she was considering the detriment. The property would not be able to be subdivided, and she asked if that was a detriment to Mr. Young. He said no. West later clarified that if a future applicant wanted to subdivide, they would have to apply for a variance. Dean said part of what they are entrusted to do is maintain the rule of the zoning law, although that can never be applied absolutely. He thought it was a creative reuse of the building.

Hicks thought if they relaxed the lot size requirement, the Planning Board would then be in a position to evaluate the special permit, and he asked whether the Planning Board would be forced to approve it. West said granting a variance removes a reason the Planning Board could deny---they could not deny on the basis of insufficient lot size or setbacks---but there are other considerations, including mitigating factors, which he described. However, there is an assumption that things allowed by special permit are allowed generally.

Hicks asked how having an additional residence will affect the primary residence as the primary residence is the immediate neighbor. Mr. Young said they have their own separate yards and views. He did not think they would come into much contact except for sharing the driveway. Lamb added that it was somewhat buffered by plantings between the two buildings.

Area Variance Findings & Decision

The Board of Zoning Appeals considered the appeal of Kenneth Young regarding the property at 1428-30 Danby Road (Tax parcel 2.-1-26.1) for an Area Variance from the Zoning Ordinance Sections 600-6 and 511 that require, respectively, a 75' rear and 50' side yard setback and double the lot area for adding a second dwelling.

1. The Board agreed no undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties (4 no).

Dean said if the building was originally a body shop, a shift to a residence would be better for the environment. Lamb said it does not change the size of the building. Billington said it was changing from commercial to residential, which seemed to be an improvement. Hicks felt similarly.
2. The Board agreed that the benefit sought by the applicant could not be achieved by a feasible alternative of the variance (4 no).

Billington did not think there was a feasible alternative. Lamb agreed unless the neighbors were willing to sell land. Dean thought it was this or continuing in its use as a storage barn. The only other option would be a commercial application, which would present other complications and traffic. Hicks said there might be somewhere else on the property that could satisfy setbacks, but nowhere could satisfy the acreage requirement.
3. The Board agreed that the requested variance was substantial (4 yes).

Lamb said the area was substantial (4 acres to 2.517 acres), and all agreed. Hicks said the rear setback of 75' to 30' is over 50%, and the side setback of 50' to 26' is also almost 50%. The applicant reiterated that the distance is mitigated by the property's geography, a defining feature. Dean said it is an unobtrusive building from the road.
4. The Board agreed the variance would not have an adverse impact on the physical or environmental conditions in the neighborhood (4 no).

Dean thought not—the only adverse impact would be making exceptions to the zoning laws as written. It struck him as an improvement with no physical or environmental issues. All agreed.
5. The Board agreed that the alleged difficulty was self-created (4 yes).

Billington said that had the plan not been to change the building to residential, there would be no issue. Lamb agreed, although there was no other way to put something there. Hicks and Dean also agreed.

Based on consideration of the five area variance criteria, the BZA determined that the Benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community and approved the variance with no conditions added. They agreed they would have more of a problem if it was trying to be subdivided.

The BZA found that a variance allowing 2.517 acres (4 acres req.), a 30' rear setback (75' req.), and a 26' side setback (50' req.) from Sections 511 and 600-6 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 of the above discussed reasons.

MOTION: Accept the variance as requested

Moved by Lamb, seconded by Dean

The motion passed.

In favor: Billington, Dean, Lamb, Hicks

Consider Area Variance

Project: Randall Subdivision – Frontage Area Variance

Location: 2016 Danby Rd. Parcel 14.-1-12.2

Applicant: Krystle Curran

Anticipated Board action(s) this month: Application Review, Public Hearing, Vote on variance

Project Description: The applicant proposes to subdivide the 98.39 acre parcel to sell the residence along with 2 acres and 200' of frontage. The remaining parcel would be deficient in required frontage by approximately 14ft.

Per the State Environmental Quality Review Act (SEQRA), as well as Local Law #2 of 1991, (Providing for Environmental Review in the Town of Danby), the action is considered a Type 2 Action. No further environmental review is required.

Per an intermunicipal agreement between Tompkins County and the Town of Danby, the proposed action is exempt from county review under New York State General Municipal Law Section 239.

Tom Mullen, the real estate agent representing the applicant, was present to speak.

Dean noted that some of the application dealt with the Town Board approving the subdivision under the moratorium.

Lamb said the septic system could be an issue in terms of selling the property but did not really affect the zoning. Chair Hicks said he wanted to explore whether shared septic systems between independent land parcels would be an issue. Planner West said Danby's zoning does not deal with this, and it would be up to the applicant to work it out with the Health Department. He said the Health Department generally does not like to grant a permit for the septic to be on a neighboring parcel; the fact that the subdivided parcel would be two acres may help. Dean said he was dubious any bank would issue a mortgage, but that was not something relevant to them.

The public hearing was opened at 8:29 p.m.

Applicant's Description and Board Questions

Mr. Mullen said a hardship waiver for the entire Randall farm has been filed so that they can subdivide two acres with Mr. Solomon's residence to allow him to continue to live there after buying it from the Randall estate. They currently have a purchase agreement for the remainder of the farm. The potential owners are thinking of building on or near the site of the Randall farmhouse prior to its burning down. Dean asked if the buyers have concerns about the shared well and septic. Mr. Mullen said there has been concern, but it has been discussed in depth, and they understand that the well and septic for Mr. Solomon's residence is connected to that of the main farmhouse. The attorneys are drafting a careful use and maintenance

agreement for the well and septic system. In response to a question from Dean, Mr. Mullen said he has been in real estate since 1971 specializing in rural properties and farms, and he can think of at least 12 properties where there has been shared water.

Lamb asked about a discrepancy on the road frontage of the larger parcel: one document said 185' and the sketch showed 170'. West said he had pulled a measurement from the tax map, which differs from the application sketch. Mr. Mullen said at present there is an application that has just been approved to widen and repair the driveway. The reason for this is that further back on the farm there is a well-defined nursery with nursery stock growing, and there is a contract that expires in 2027. The farm is being sold with an easement in place for harvesting this nursery stock, and they would like the driveway to be safe for large trucks to come in to remove the stock. He added that there are two driveways, one to Mr. Solomon's residence and the other to the remainder of the farm. Dean asked if there was any issue with the driveway being right along the property line, and West said Danby does not have a setback requirement for driveways.

Hicks said that the new owners will need to build a house. If it was large, it could impact the existing structure in terms of septic and well. Mr. Mullen gave a history of the site in relation to the well and septic. Dean pointed out that the proposed house siting might be too close to the lot lines to meet setback requirements.

Hicks asked if anyone had reached out to the neighbors about buying 15' of frontage. Mr. Mullen did not think buying land to the north would change that they are 15' short of the zoning requirement because it is 200' from the north to Mr. Solomon's driveway. Lamb mentioned the idea of moving Mr. Solomon's driveway to the north also; Mr. Mullen said it is a long and substantial driveway and would be expensive.

Hicks said the variance is not substantial, but it does create a mild flag lot. Billington said he was less concerned about the 15'. However, if the potential buyers choose the site of the old house, he thought they would have setback issues. He also asked if they built on the site and used the foundation, because it was built according to past zoning, would the old setbacks be in effect? West said that if damage happens that requires repairs that are more than 75% of the replacement cost of the structure, then you have to meet current zoning; using the footprint would not mean they were grandfathered in. Mr. Mullen said it was his understanding that there was no cellar under the existing farmhouse that burned, and the debris was trucked away. He thought the potential buyers could move the house location as necessary and would be adhering to the current zoning regulations.

Dean said he did not see many properties along the west side of the road with less than 200' of frontage, but there are a few on the opposite side.

Public Comment

No members of the public spoke during the public hearing. No written comments had been received.

The public hearing was closed at 9:04 p.m.

Hicks said, if a variance was granted, one parcel would have enough road frontage and the other would not. The smaller parcel would conform with zoning. Lamb pointed out that the lot line is not perpendicular to Danby Rd., so if they make the south border line for the two-acre plot parallel to the north border line, there will be a pinch. Dean noted this does not affect the road frontage. Billington and Lamb both summarized that they were only looking at the road frontage for the larger parcel. West recommended wording any variance to be flexible because it had not been surveyed and they were not clear whether it is 170' or 185' frontage left over after subtracting 200' for the northern parcel. He said if the Board wants to grant the variance, they will not want it to be off by a foot when it is surveyed. Mr. Mullen said surveys will be provided.

Area Variance Findings & Decision

The Board of Zoning Appeals considered the appeal of Krystle Curran regarding the property at 2016 Danby Road (Tax parcel 14.-1-12.2) for an Area Variance from the Zoning Ordinance Section 600-5 that requires 200' of frontage.

1. The Board agreed no undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties (4 no).
Billington did not think a great change would be produced because it is rural property and there is already a residence there. The new residence wouldn't constitute much of a change. Dean and Lamb agreed. Lamb said there were some properties across the street with narrow frontages. Hicks thought granting the variance would not create more congestion assuming a house was going to be built to replace the former residence anyways. Nothing would be different if they had an additional 15'.
2. The Board agreed that the benefit sought by the applicant could not be achieved by a feasible alternative of the variance (4 no).
Lamb said the suggestion of buying 15' to the north did not seem feasible and the south did not look feasible on the map. Dean, Billington, and Hicks agreed. Hicks thought one alternative would be they could split the variance in half between the parcels, but it would be an additional variance request and the driveway defines the northern parcel's south boundary.
3. The Board was split on whether the requested variance was substantial (1 yes, 3 no).
Dean thought it was less than the requirement and substantial. Billington thought it was not substantial as, depending on the survey, it would be 7-15%. Lamb thought it less substantial than some. Hicks said not substantial. Billington remembered a training he had taken in which a NYS court had decided anything under 15% was not substantial.
4. The Board agreed the variance would not have an adverse impact on the physical or environmental conditions in the neighborhood (4 no).

Billington thought not because someone was already living in the barn and for years there was an abode on the remainder. He did not see any stream erosion considerations and it did not seem as if it would change the apple orchard, hay field, or access to the nursery stock. Dean and Lamb agreed. Lamb thought no one in the neighborhood would notice the difference between the 200' versus 185'. Hicks said the two-acre parcel would be compliant and could put in a septic system and agreed no impact.

5. The Board agreed that the alleged difficulty was self-created (4 yes).
All felt it was self-created.

Based on consideration of the five area variance criteria, the BZA determined that the Benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community and approved the variance with no conditions added.

The BZA found that a variance allowing road frontage appropriate to allow removal of 200' of road frontage for new parcel with remaining frontage less than 200' from Section 600-5 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 of the above discussed reasons.

MOTION: Grant the reduction of the required road frontage such that it is the remainder after 200' has been removed for the subdivided parcel.

Moved by Lamb, seconded by Dean

The motion passed.

In favor: Billington, Dean, Lamb, Hicks

There was a brief discussion about how the proposed zoning update would change the requirements.

ADJOURNMENT

The meeting was adjourned at 9:55 p.m.

Alyssa de Villiers – Recording Secretary