

Town of Danby Board of Zoning Appeals
Minutes of Hearing and Meeting
July 27, 2021
DRAFT

PRESENT:

Lew Billington
Gary Bortz
Toby Dean
Betsy Lamb
Earl Hicks

OTHER ATTENDEES:

Town Planner David West
Recording Secretary Alyssa de Villiers
Public Barbara Ganzel, Tony Serviente, Val Shepardson

This meeting was conducted in person with virtual access available through Zoom.

The meeting was opened at 7:13pm.

MEETING WITH STAFF (TOWN PLANNER)

Zoning Update

Planner West reported that he had worked with the hamlet and conservation working groups to focus development in the hamlets and discourage development outside of the hamlets. The current Low Density Residential zone is proposed to become four new zones to have more context. West said he is now pausing the working group meetings so the community can review the draft changes. People can absorb the material and provide feedback to the Town Board. There are some substantial changes. It makes it easier to build in the hamlets and harder to build outside of them. The purpose is to bring the Town's zoning in line with the comprehensive plan. While the Town is a little behind in getting to this, the charge is clear—preserve rural character, protect open space, and invest in the hamlets. He said the changes add a transfer of development rights, and there is a lot to explain. Meeting recordings are available on the Town's YouTube channel. Next month the Town Board will give a charge on what needs more work or changes. The goal is to have something adoptable by the end of December, when the subdivision moratorium expires.

Multiple Board members expressed thanks for West's work. Chair Hicks said he hoped that some areas that have been confusing to the BZA will be addressed. West said feedback on that would be welcome, including on the interpretation of passages and on places things get mentioned multiple times, sometimes in conflicting ways.

MINUTES APPROVAL

MOTION: Approve the minutes from December 22, 2020 and May 25, 2021

Moved by Lamb, seconded by Dean

The motion passed.

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

NEW BUSINESS

VAR-2021-02 Consider Area Variance

Project: Construction of Workshop/Garage

Location: 66 Muzzy Rd, Parcel Number 2.-1-40

Applicant: Tony Serviente

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

Project Description: The applicant proposes to build an accessory structure as close as 2' from the property line. Zoning requires a 10' setback for accessory structures. Therefore, the applicant has requested an area variance from the above referenced sections of the Zoning Ordinance.

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 reviewed the case description and described the Board's process. He noted that the variance request is from Section 512 of the Zoning Ordinance.

The public hearing was opened at 7:29 p.m.

Applicant's Description

The applicant, Tony Serviente, described the project. He did not think it would change the quality of the neighborhood as there would be no loud noises or emissions. He said he was moving his studio to Danby after being in a residential neighborhood in Ithaca since 1995 with no complaints. He is a glass artist who makes and repairs stained glass windows and manipulates glass in kilns; he also teaches. He is not a glass blower, so there are no furnaces, stacks, or emissions. He thought the workshop would be lower impact than a food processor in terms of equipment and noise. He does not plan to have employees and may have an occasional student or apprentice. He did not think you would see the building from the road much; it would not be a big cosmetic change. It is proposed on a higher part of the property that is lawn now and there are no wetlands. He said he was asking for a variance because the building is wider than he can

situate given that his insurance agent says insurance companies will want it to be 30' away from any flammable part of the house, including the garage and deck. It is a small property and there is not enough room to put it in the orientation he would like. If he rotates it 90 degrees, there is a change in elevation and it would significantly increase construction costs. The additional 8' (2' from the property line when the code calls for 10') would allow the building to fit. Lower down on the property would not be accessible from the driveway and there would still be space problems. Making the building two stories is not reasonable for carrying large sheets of glass, would raise the cost, and has more visual impact. He noted that his lot was carved out of a larger parcel and that owner does not want to sell any property. In response to a question from Dean if the nearby fields were under cultivation, Mr. Serviente said no, they are hayed.

Public Comment

Hicks said that neighbors had been contacted in person by Planner West. West said no one expressed a problem with the project and he received no negative comments. He had not received any written responses from the public.

Val Shepardson, a neighbor, said she had no problem with it, and she thought she would see it the most.

The public hearing was closed at 7:40 p.m.

Board Questions and Discussion

Chair Hicks said setbacks for an accessory building are 10' from side and rear lot lines. He read the definition of an accessory building. Betsy Lamb asked if this would be considered commercial, and Planner West said no, it is a home occupation. Gary Bortz asked about a special permit, and West said it is a permitted accessory use without a special permit unless there is external evidence of the activity.

Hicks brought up the use of "noxious commodity" in Section 512-3 and said he thought they should be clear on that. He asked the applicant to address this. Mr. Serviente said his inventory of things that could emit an odor includes glass cleaner, linseed oil, and mineral spirits. They produce a localized odor and would not permeate the neighborhood. Lamb asked if he uses a gas or electric kiln; it is electric. Lew Billington asked about lead. Mr. Serviente said he uses lead, but it does not become vaporized at the temperature he uses to solder and he does not abrade it. He said he has lead tests done every other year, and while the levels are above the average person, they are nowhere near remediation. The lead has to be kept inside; it is in strips called canes. Soldering it involves electric soldering irons, but it never boils.

Hicks asked about Mr. Serviente's business in downtown Ithaca, and Mr. Serviente said he was there since 1995 with no complaints in a residential neighborhood and there was a second-floor residence with no issues. Hicks asked if he was going to be doing anything different in this new location. Mr. Serviente said he is changing his area of focus, but he would not be using different equipment. Hicks asked if he needed a special permit in the City of Ithaca, and Mr. Serviente said no. Toby Dean asked if the applicant was working with an architect, and Mr. Serviente said no.

Siting

Dean asked about alternatives. He asked if the applicant had looked at placing the workshop under the area with overhead wires. Mr. Serviente thought there would still be problems with setbacks there and there would not be driveway access. He said driveway access is important for handling the glass. Lamb thought that location might also be considered the front yard.

Dean said the northwest corner (of the proposed building) is extremely close to the line, and the eastern side is less close. He asked whether both were less than the 10' required, and Mr. Serviente said neither met the setback. Lamb said this was unclear in the description – was he asking for a variance for the side line also? Mr. Serviente said ideally he could get within 2' of both. He said he is stuck with the shape of their parcel. West clarified that the applicant was asking for a variance from both side and rear setbacks; it is one provision.

Hicks said he had done a site visit. He said there were clear designations of where the corners of the building would be. In thinking about whether the request is substantial, he thought 2' compared to 10' is substantial. He wondered what would happen if the survey was incorrect and the building turned out to be on a neighboring property. Mr. Serviente shared that the survey was from around 2001.

Bortz expressed concern that they would set a precedent of allowing only a 2' setback for any commercial building, or in fact any building. Dean noted there are no other structures around it, and Bortz said that is only at this point in time. Bortz said the insurance company might prefer 30', but the applicant could have 22', and the Board doesn't know what requirements would be needed. If the separation between the house and the workshop was under 10', he would run into code problems. West said buildings could be as close as touching each other, but they would have to meet requirements like fire-rated walls and minimal windows. He added that that could be one potential impact, i.e., that it could make it harder for someone else to build close to the lot line.

Lamb agreed that a 2' setback was really close. She thought they tend to think about what is there now, but things can change, and then a building would be 2' from the neighbor's property. In response to a question from Hicks about setbacks for primary residences, West said the side setback for the zone is 50' for a residential building. Hicks said there is no inference about how far a future house needs to be away from an accessory building. Dean noted that Mr. Serviente's existing house does not meet the setback from the side lot line; Bortz said the deck is 19' from the line and the house is 26'.

Lamb asked what the workshop would look like if it met the 10' setback requirement. Dean said it would be very close to the house if it were the same size. Hicks noted that the property slopes down significantly pretty quickly after the western edge of the proposed workshop.

Billington said that, if the applicant got insurance clarification, he could maybe turn the workshop so the long side of the rectangle was parallel to the north boundary line, which would give 16'+ to the corner of the garage. He felt that with a firmer determination from an insurance company, and with more clarity of the

materials to increase fire protection, a decision might be less arbitrary. Bortz asked what more Billington thought the applicant should provide. Billington thought if Mr. Serviente could figure out what the building was going to be made of, he might be able to change the orientation enough to be more than 10' from the lot lines.

Mr. Serviente asked if there was enough road frontage to the east that someone could put a house next to that property line; if there was no potential for building, it could mitigate concerns. The answer was that 200' of frontage is currently needed to subdivide. West thought it would be hard to divide up a piece there. He also thought it was not very likely another similar parcel would be backing up to Mr. Serviente.

Lamb asked if the applicant could reduce the size of the building. Mr. Serviente said that he could, but it would be far from optimal.

Insurance requirements

Bortz asked if the applicant had an insurance company for the project. Mr. Serviente said his insurance agent asked insurance companies what they would require for the project and that is where he got the 30' distance from anything flammable. Billington asked if that was due to kilns, and Mr. Serviente said he thought so, and they don't differentiate between types of kilns. Billington pointed out that within the building it might matter what type of material or enclosure is used, which might mitigate the 30'.

Hicks said they were evaluating the request based on the zoning ordinance. He noted the applicant would still need to get a building permit, which will be based on the International Building Code and fire code. If they grant a variance, it is up to the applicant to deal with the insurance and code enforcement. He suggested the Board consider alternatives like sizing and orientation. Bortz thought they were getting ahead of themselves. He said they were not in the process of designing it for the applicant. He asked, how does the building as proposed affect Danby's zoning? What is the bare minimum requirement of relief?

Lamb asked about turning the building to mirror the property line. Mr. Serviente thought the corner then gets closer to the house and would be within 30', which could be a problem for the insurance company. Bortz pointed out the applicant did not have an insurance company yet and the estimate was for a range of 15'-30'. He thought the distance could be 22', say, and some companies would still insure it. Mr. Serviente said it was an unusual situation and he didn't know what he would get. West said the way it will be reviewed by the Code Officer (CO) will be based on the design of the building; the occupancy type doesn't need to come into the zoning. Bortz asked how tall the building would be, and Mr. Serviente said an 11' ceiling, so maybe 15'. Hicks thought being more concrete on what the shell will be made out of could help pin down an insurance agent. Mr. Serviente said he could try. He thought it would be stick built with metal siding. After some discussion, Hicks summarized that West said there were no codes that would put a roadblock up to the structure.

Barbara Ganzel said the reason they (she and Mr. Serviente) were asking about a range of insurance companies was that if one company was okay with a shorter distance, but all the rest wanted longer, then if

that company went of business they would be out of luck. She said they need the distance that most companies will insure. Bortz thought the insurance company would be more likely to say, "If you do this and this in your building, we will insure you." They might want it built differently depending on the distance from the house.

Possible postponement

Hicks said that, after the public hearing, the State requires a decision to be made within 62 days. He asked the applicant what his timeline was, and Mr. Serviente said he hoped to start in September. Hicks clarified with West that if a variance was not granted, the applicant could come back in the future with a different proposal.

Lamb asked the applicant how he would adapt the plan if their answer was no. Mr. Serviente said he would have to think about it. He could look at converting the garage with a separate smaller building for the kilns. Hicks pointed out that if the applicant could meet the 10' setback, the BZA would have no say.

The idea of waiting until the next meeting to make a decision was raised, and Bortz asked what more they would be asking for. Hicks thought the tangible would be a written statement from an insurance company about the distance the workshop needed to be from the house. Lamb thought if there was a plan that worked for the applicant and the insurance company, the applicant might not need a variance at all. Bortz thought the Board needed to specify whether they would approve the project as it was. He reiterated that he was not happy with it being 2' from the line and wanted to see the full 10' setback.

Hicks asked if there was a willingness to postpone until next month; Hicks said the postponement would be to consider the variance as is or with the minimum relief based on getting concrete information from the insurance company. Billington, Dean, and Lamb said they would be okay with postponing. Bortz said he was prepared to vote and preferred not postponing. In response to a question from Mr. Serviente, Hicks said the applicant would need three yeas to approve the variance.

Planner West said, if the Board asks Mr. Serviente to find an insurance company, could he prove there is not an insurance company that would allow a smaller distance? The letter from the applicant's insurance agent is helpful as an expert in the field giving information. If Mr. Serviente does not bring a letter saying that it can be 15' separation, that does not mean it does not exist. Bortz did not think that was their business. West said the question was if there was a practical difficulty—Mr. Serviente is saying it will be expensive and provide financial uncertainty for the future if he does not follow this industry practice, and it is up to the Board to decide if they accept that as a practical difficulty. The letter from Mr. Serviente's insurance agent said spacing should be 15'–30' and that farther away gets more markets to go through.

Bortz reiterated that at 22' from the garage, Mr. Serviente would not need a variance. Mr. Serviente asked if he would be obligated to go with an insurance company that would write a policy at less of a separation but at three times the cost. Bortz thought this shouldn't influence it. Billington summarized that the applicant might find a company who allows the workshop closer but at an exorbitant premium. Hicks said the Board

can't force Mr. Serviente to do that; he has the right to come back and say what he wants to do. Lamb said this was saying to her that they should vote on the variance being requested because they cannot deal with the building materials or the insurance.

Mr. Serviente asked if it was incumbent on him to meet the existing setback regardless of cost, because if so, there are things he could do. Hicks thought what was causing the dynamic was the substantialness of the proximity to the lot line. Mr. Serviente asked if he could change his request to 5'. Planner West noted that the Board can grant the minimum variance that they believe will relieve the practical difficulty. He said in this case the difficulty is with the risk of additional insurance expense, which is more nebulous than most the Board deals with. West said the ultimate thing the Board is considering with the five factors is whether the benefit to the applicant outweighs the negative impact to the neighborhood.

Dean remembered the Board approving an expansion of a studio on E. Miller Rd. Billington recalled that the building was already established and the applicant was just lengthening. Hicks added that all the buildings are close there, so it would not have changed the dynamic of the neighborhood.

Mr. Serviente said he would accept a smaller setback. He was not sure more insurance information would help. But Billington said that if they grant a 5' setback and the insurance company still wants 30', it would not have got Mr. Serviente anywhere, although that is not the Board's problem.

Area Variance Findings & Decision

The Board of Zoning Appeals considered the appeal of Tony Serviente regarding the property at 66 Muzzy Road (Tax parcel 2.-1-40) for an Area Variance from the Zoning Ordinance Section 512 that requires a 10' setback from lot lines for accessory buildings. The property is in the Low Density Residential Zone.

1. The Board was split on whether an undesirable change would be produced in the character of the neighborhood (1 yes, 4 no) or a detriment to nearby properties (2 yes, 3 no).

Billington said no undesirable change would be produced. Lamb thought the change would not be undesirable, but there was potential detriment because it would be so close to the property line. Dean said no undesirable change or detriment because lots of roads have home businesses, the Town wants to be more self-reliant by having businesses that do not require driving, and currently the neighbors are cultivated fields. He thought the only detriment would be a concern about precedent. Bortz felt that the character of the neighborhood includes appropriate setback requirements, so he thought that yes, an undesirable change would be produced. Hicks said that, regarding precedent, former planner C.J. Randall was clear that every situation has some unique difference, so he was less concerned about that. He thought, when driving down the road, you don't see lot lines, but you do see houses and garages, and when there are a lot it starts to look like suburbia. He said many houses have a detached garage, and he was considering this building like a garage, so he did not think the character would be impacted.

2. The Board was split on whether the benefit sought by the applicant could be achieved by a feasible alternative of the variance (4 yes, 1 no).

Billington said he did not think this had been sufficiently explored, and Lamb agreed. Dean said he was unable to do a site visit, but the lower left corner of the property was the only possible alternative he saw, and it had issues including relocating the overhead wires, a new driveway, and possibly grade; because of the cost, he thought there was not a feasible alternative. West added that location would require a variance because it is in the front yard. Bortz said yes because there were too many unknowns. A 10' setback gives a separation for which the special building requirements are unknown at this time, but he thought the distance would be sufficient for any insurance company. Hicks thought yes.

3. The Board agreed that the requested variance was substantial (5 yes).

Every member thought it was substantial. Bortz noted that it was under the minimum setback requirement by 80%.

4. The Board agreed the variance would not have an adverse impact on the physical or environmental conditions in the neighborhood (5 no).

All members agreed there would not be adverse impact. Dean added that accessory buildings are part of the rural landscape in Danby.

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

All agreed it was self-created. Dean said that if an accessory building has certain requirements for the applicant to be able to practice his trade, it was not clear to him that that was necessarily self-created, but he still thought yes. Hicks added that he thought yes because of the applicant's choice of the size of the building.

There was discussion on whether to consider granting a variance of 5' rather than the requested 8'. The applicant said he would like them to consider the 5'. Billington thought it would have been helpful if the insurance company had made a determination. Bortz thought there were too many unknown variables and said he wanted to see the applicant come back and propose 5' if that is what he wanted. Ms. Ganzel said she believed that with a 5' variance Mr. Serviente could nibble the remaining 3' out of his building plans and still get to a building that he could work in.

Dean made a motion that a variance of 5' from Section 512 was the minimum variance that should be granted and that at that level the benefit to the applicant outweighs the detriment to the neighborhood. Billington asked why they would allow a 5' setback instead of a 2' setback if there was no particular detriment. He did not think there had been adequate exploration of how the workshop would be constructed and what the insurance company would allow. He said the 5' gets neither the Board nor the applicant anywhere. Bortz agreed and reiterated that he wanted to vote on the variance as requested. He said he would like to see the cost and insurance information better supported. Dean said they had never heard about insurance on a proposal before, and it was agreed this was unusually limiting. Billington thought a

small amount of verification by the insurance company could be done if Mr. Serviente had to reapply, and then the Board might not need to even be involved. Dean's motion was not seconded, and it was withdrawn.

MOTION: Vote on the variance as proposed with the requested 2' setback (8' variance)

Moved by Bortz, seconded by Lamb

In favor (benefit to the applicant outweighs detriment to neighborhood): Billington, Dean, Lamb, Hicks

Against (benefit to the applicant does not outweigh detriment to neighborhood): Bortz

The variance was approved (4 yeas, 1 nay).

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 of 8' from Section 512 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.

ADJOURNMENT

Many members said they would not be able to attend in August, and it was decided not to have a meeting.

The meeting was adjourned at 9:34 p.m.

Alyssa de Villiers – Recording Secretary