

**Town of Danby
Board of Zoning Appeals
Public Hearing Minutes
April 29, 2010**

Members Present:

Al Becker
Allen Wagner
Christine Decker
Gary Bortz

Member Recused:

Nancy Medsker

Others Present:

Pamela Goddard	Town Clerk
Susan Beeners	Code Enforcement Officer
Councilpersons	Leslie Connors, Dan Klein
Planning Board	Ann Klingensmith, Robert Roe, Naomi Strichartz, Olivia Vent

Members of the Public:

Joel Gagnon, Ted Crane, Camille Doucet, Henrike Burton, Bill Farrell, Nancy Medsker, Tom Seaney, Phil Quick, Sara Quick, Donna Holt, Cindy Black, Andrea Butje, Mariette Golenhuys, Christina Polmy, Russ Klinger, Sally Ryan, Lisa Holmes, Allie Sawyer, Susan Bissell, Arjan Makar, Harriet Adams, Ken Adams, Mahlon Perkins.

Designating a Chair for these Public Hearings:

Al Becker was designated to chair the meeting (nominated by G. Borst, second by A Wagner); accepted by general acclamation.

The meeting was called to order at 7:28pm

Planning Board Hearing #1, 58 Marsh Road:

Public Hearing to consider the March 17, 2010 Appeal of the Town of Danby Planning Board of the February 14, 2010 determination of the Town Zoning/Code/Fire Enforcement Officer with respect to the proposed use of 58 Marsh Road for workshops of "The Aromahead Institute" for up to 20 people in each workshop, to be held by the residents Andrea Butje and Cindy Black during a 4-month period annually. Said determination was that the proposed limitation of cars parked in the driveway of the premises during the workshops to 4 cars, along with proposed carpooling, would be consistent with the parameters of a customary home occupation, as provided in the Zoning Ordinance of the Town of Danby. The subject property is located on Tax Parcel 6.-1-31.1, in a Low Density Residential Zone.

Two letters, from Suzanne Green and Sarah Elbert, were read into the record by Secretary Goddard.

A statement by counsel for Black and Butje (Mariette Golenhuys) acknowledged the awkward, unusual circumstance of a BZA being asked by the Planning Board to review a determination by the Code Enforcement Officer. She wish to clarify misinformation and make sure that the BZA considered accurate information. This is Black and Butje's residence for the summer months. They plan, primarily, to write and work on the online aspect of the Aromahead business. Confusion stems from their web site, through which they offer online courses. This is not a school facility or dormitory. Occasional classes will be held in the living room of their home. All renovations were done via procedures approved by the Code Enforcement Office.

According to counsel, Black and Butje have explicitly agreed to limiting their operations in the following ways:

- They will teach no more than 20 people at a time, no more than ten days per month, for no more than four months per year. During 2010, no more than five days per month for four months.
- They will limit the number of visible vehicles in the driveway to their property to four, in addition to their private vehicle.
- Black and Butje understand that any increase in the scope of these operations will require a clear and written agreement with the Town of Danby.

Counsel asserted that this volume of traffic is not inconsistent with normal use in a low density neighborhood and will not present any external evidence of a business. On this basis she urged the BZA to uphold the determination that this is a customary Home Occupation.

Cindy Black made a statement, starting with an apology for “creating chaos” by their entrance to the neighborhood. She described herself and Andrea Butje as non-traditional teachers and cited this as a reason why they like to teach at home. She asserted that this will be their home, that they will not do any retail sales from this location, and that they maintain their privacy by not posting their address on their web site nor will they have a sign for their business. While she understands the confusion created by their web site, Black asked the neighborhood to trust their intentions.

Ann Klingensmith, representing the Planning Board, stated that the fact that the PB appealed the determination of the Home Occupation should not be construed that the PB opposes the concept of the project. The Planning Board’s concerns related mostly to the scope and scale of the business, centering on the challenge of controlling traffic with up to 20 people attending a workshop. The Planning Board questions the efficacy of controlling the size of a business by the amount of vehicle traffic. Enforcement of this seems impractical.

Following these opening statements, there was a short period of Q&A between members of the BZA and parties to the appeal. The question of transporting people to and from the workshops, via car pooling, was addressed by Andrea Butje.

The floor was opened for comments. Tom Seaney spoke against project as not fitting the nature of the neighborhood. Sue Bissell spoke in favor of the Aromahead Institute as a long time friend and student of Black and Butje, expressing regret that worries have arisen related to healing arts. Lisa Holmes spoke in support of Black and Butje as neighbors and friends, describing them as people of integrity and respectful of the land. Bill Farrell, a nearby neighbor, spoke in favor of project, saw no problem with Black and Butje having meetings in their home, stating that he and others in the neighborhood often have four additional cars parked at their residences. Sally Quick addressed her concern as a disabled person relating to truck traffic, construction noise, and possible fumes from essential oils. Steve Merwin, contractor, responded to questions related to the process of building this structure and working with Black and Butje. Arjan Makar, a student of Black and Butje described a typical class and noted the Aromahead philosophy of respect for natural materials and “using less.” Students do not stay overnight at the school. Essential oils are not blended outside due to their volatile nature.

Leslie Connors commented that this appeal was related to the determination of this being a Home Occupation, not whether these two people would be good neighbors. She expressed regret that Black and Butje needed to defend themselves as good people. The concern was more about how the determination was made and perhaps a public hearing should have been held before the determination was made. Naomi Strichartz spoke to further clarify the concerns of the Planning Board, that this seemed large as a Home Occupation and that the process had been circumvented. Olivia Vent spoke of the Planning Board’s concern about the process of determination and precedent—particularly what implications this determination might have for future zoning determinations.

Adjourn Public Hearing #1 at 8:15, to open Public Hearing #2

Planning Board Hearing #2, 58 Marsh Road:

Public Hearing to consider the April 9, 2010 Appeal of Nancy G. Medsker, 67 Marsh Road, from the decision or determination of the Town of Danby Code Enforcement Officer made on or about February 14, 2010 that the proposed use of the premises at 58 Marsh Road (Town of Danby Tax Parcel 6.-1-31.1) by the Aromahead Institute, Cindy Black and Andrea Butje, constitutes a “Home Occupation” and does

not require a use variance.

A written statement and support materials was submitted by Nancy Medsker, read into the record by her. Following Medsker's statement, her counsel Mahlon Perkins addressed the BZA regarding the problem of the process and the lack of definition of a "school" in the current zoning ordinance. Perkins cited definitions of "school" from Webster's and Black's Law Dictionaries. In Perkins' opinion, "This is a real stretch to determine that this a Home Occupation." As a school, with the anticipated number of participants, this requires a use variance. Perkins' further position is that they could do this project but that they needed to go through the proper procedures, that the determination of the CEO is not supported by the record or anything submitted by the applicants, that the decision made this evening would be upheld if it was neither irrational or unreasonable. He suggested that to find anything other than that this is a school would be just that.

Following these statements there was an extensive period of Q&A between members of BZA, the Code Enforcement department, and the public. These questions related to the scope of other schools which were denied customary home occupation status, the specific set up for workshops through Aromahead, what arrangements would be made for participants' meals, and other similar questions.

Sue Beeners responded to questions regarding the process of her determination and whether she "squeezed" this project into the category of customary home occupation. The determination references simple limitations proposed by Black and Butje. She stated that the criteria for home occupation in the current ordinance do not set any limits for the number of participants nor any limits on the amount of income generated. She compared this project to existing classes and workshops offered at professional offices such as used by architects and health care professionals. The workshops are an accessory use of the structure and there are no criteria for square footage for a home occupation. Based on precedent, Beeners position is that this project does not require a use variance.

The size of the room and set up for teaching were described. Participants sit in couches and chairs around small tables, learning how to mix small amounts of essential oils into body care and cleaning products. The building was described as well designed and not unusual for some of the larger homes which have recently been built. Lunches will be provided or students will be encouraged to bring their own.

Nancy Medsker added that, from her heart, she believes that this will be very disruptive and would change the character of the neighborhood. Andrea Black described holding similar workshops during a ten-year period in a small neighborhood in Newfield without complaint. She added that they would be very open to making changes to their program if any of the neighbors have a bad experience.

Adjourn Public Hearing #2, Medsker Appeal at 8:40pm
Reopen Public Hearing #1, Planning Board Appeal, at 8:40pm

On reopening the Planning Board Appeal, the BZA engaged in a lengthy discussion of the issue. Questions were directed to Beeners regarding compliance with building codes, the fire barrier required, whether Home Occupations are required to be reviewed by the Planning Board, and if it is known how many Home Occupations are operating in Danby.

A question was directed to Medsker as to the distance of her home from the road. Black and Butje were asked what arrangements they have for the house during the months they are in Florida and whether anyone else is hired to help with their business.

Beeners responded that all code requirements were met in a timely manner. Any Home Occupation which exceeds 15% of the square footage of the home requires fire separation similar to that separating a home and a business by NYS building code. Normally Beeners learns about Home Occupations through word of mouth. She believes that there may be between 15-20 Home Occupations in Danby.

Medsker responded that her home is 500 feet from the road but stated that, "All the noise comes right up the hill." It was pointed out while Marsh Road is a through road it is a dirt road. Black responded that their house will be closed up during the winter months and that they are the only staff for their business.

The BZA then entered into a discussion regarding the definitions and guidelines for Home

Occupation and teaching enterprises as found in the current zoning code. Each member of the BZA expressed an opinion on the case. The BZA focused its concern on whether Beeners determination was consistent with the zoning law. The view was presented that the zoning code was created in 1964 and has not been updated. On review of case law, the view was presented that, in the case of ambiguity in the zone, the determination goes in favor of the applicant. Review and update of the zoning code may well be in order. The amount of parking and the size of the structure does not make this building stand out from other residences.

The question of what constitutes visible evidence or external evidence was also somewhat ambiguous. Guy Krogh, counsel for the Town, pointed out that other Towns (such as Ithaca) have more specific zoning ordinances. This board is charged with interpreting these facts and this evidence related to Danby's zoning ordinance. This ordinance has a general definition of home occupation and seeks to measure objective impacts—will the Home Occupation create negative impacts or alter the residential character of the neighborhood? Again, these questions may indicate that revision of the zoning ordinance is due.

Public Hearing #1 closed at 9:25pm

Motion to Deny the Appeal:

The Board of Zoning Appeals of the Town of Danby denies the appeal of the Planning Board and confirms the determination by the Town of Danby Code Enforcement Officer regarding the permitted use of a customary Home Occupation at 58 Marsh Road, and further directs the chair to issue a finding statement and determination within five days as required by law.

Moved by Alan Wagner, second by Christine Decker, the motion passed

Gary Bortz	AYE
Christine Decker	AYE
Alan Wagner	AYE
Allen Becker	AYE

Reopen Public Hearing #2, Medsker Appeal, at 9:35pm

Public Hearing #2 closed at 9:35pm

Motion to Deny the Appeal:

The Board of Zoning Appeals of the Town of Danby denies the appeal of Nancy Medsker and confirms the determination by the Code Enforcement Officer regarding the permitted use of a customary Home Occupation at 58 Marsh Road, and further confirms that the proposed use and occupation does not require a use variance, and further directs the chair to issue a finding statement and determination within five days as required by law.

Moved by Christine Decker, second by Alan Wagner, the motion passed

Gary Bortz	AYE
Christine Decker	AYE
Alan Wagner	AYE
Allen Becker	AYE

The BZA agreed to reconvene at 6:30pm on Monday, May 3 in order to finalize and approve the finding statements and determinations.

Pamela S Goddard, BZA Secretary