

**Danby Board of Zoning Appeals
Minutes of Hearings and Meeting
May 31, 2011**

Present:

Allen Becker
Gary Bortz
Nancy Medsker
Joe Schwartz
Alan Wagner

Others Present:

Secretary Pamela Goddard
Public Camille Doucet, Virginia Tesi, Hallie Magden,
Ted Crane, Robert Roe

BZA Chair, Al Wagner opened the Doucet hearing at 7:04pm

PUBLIC HEARING to consider a request for variance of the minimum 50-foot front yard depth from the road right of way line required in Section 600, Para. 5 of the Town of Danby Zoning Ordinance in order to construct a carport with a front setback of 20 feet, at 30 Marsh Road, Town of Danby Tax Parcel 6.-1-21.217. Camille Doucet, Owner/Applicant.

Public Comment

Four letters of support from neighbors were read at the meeting. There were no other comments.

The hearing was closed at 7:07pm

Doucet Variance Discussion

The BZA held a discussion about the requested variance. Opinions were expressed that the house is in compliance, that there is very little useable land at this location and that the proposed location for the carport would be least invasive to the rest of the lot. If it were pushed back farther, there could be erosion problems. There did not seem to be any detriment to the rest of the neighborhood.

Bortz asked whether this was a new lot and whether the applicant was aware of setback restrictions when designing these buildings. Doucet replied that yes, this is a new parcel of land and that setback requirements were known but there was little space. There is a two acre legal lot, much of it in forest with steep slopes.

There was further discussion of the limiting factors of this location. Any other location would encroach on large trees, the house, or the well. In addition the proposed location would not create a problem with sight lines for traffic safety.

MOTION TO GRANT THE VARIANCE:

The Board of Zoning Appeals of the Town of Danby grants the variance on Town of Danby Tax Parcel 6.-1-21.217 as requested.

Moved by Alan Wagner, second by Nancy Medsker, the motion passed

Allen Becker	AYE
Gary Bortz	AYE
Nancy Medsker	AYE
Joe Schwartz	AYE
Alan Wagner	AYE

The Tesi/Magden Hearing was opened at 7:18pm

PUBLIC HEARING to consider a request for variance of the minimum 50-foot front yard depth from the road right of way line required in Section 600, Para. 5 of the Town of Danby Zoning Ordinance in order to maintain a front yard depth of 37.8+/- feet for a house under construction at 151 Beardsley Lane, Town of Danby Tax Parcel 2.-1-9.15. Virginia Tesi and Hallie Magden, owners/applicants.

No correspondence was received from neighbors related to this request. Virginia Tesi reported that she discussed this with her neighbors and had no negative responses. She was happy to answer any questions.

Tesi Hearing was closed at 7:21pm

Tesi Variance Discussion

There was a lengthy discussion of the chain of errors that contributed to the house being placed in a location that is not in compliance with the required setback. The house is where it should be but the alignment was tilted so that one corner is too close to the road. The original diagrams, submitted with the building permit, showed a setback of 75 feet. The house, as it exists, has been repositioned. The applicant was asked, "Whose decision it was to reposition the house?"

The applicant responded that the building permit was submitted by the contractor, with a setback of approximately 70 feet. There was a decision to shift the alignment to take advantage of the woods and provide a view of a pond. A contractor error, measuring the setback from the center of the road rather than the road right-of-way line, led to one corner of the house being out of compliance with the setback requirement. The applicant, a real estate attorney, described her mortification at having to make this request. She stated that, while things didn't look quite right, part of the way through construction, she relied on the contractor's assurance that the measurements were correct. In addition, there was an error when Code Enforcement Office "paced off" only the northeast corner of the foundation; that corner is in compliance.

There was a lengthy discussion of where the responsibility for proper setting of the house should lie and whether it was appropriate to issue any fines. Procedures to avoid this problem in the future were also discussed. The BZA expressed concern that this variance should not set a precedent for encroaching on the required setback. It was decided that no fines were appropriate in this case.

In this case, which is not a detriment to the neighborhood and not dangerous in terms of traffic safety, the owners acted with due diligence by relying on the expertise of their contractor and the Danby Code Office.

MOTION TO GRANT THE VARIANCE:

The Board of Zoning Appeals of the Town of Danby grants the variance on Town of Danby Tax Parcel 2.-1-9.15 as requested, contingent upon acknowledgment that the placement of the house is a result of approval given by mistake by the Code Enforcement Office and that the applicant acted in good faith.

Moved by Alan Wagner, second by Joe Schwartz, the motion passed

Allen Becker	AYE
Gary Bortz	AYE
Nancy Medsker	AYE
Joe Schwartz	AYE
Alan Wagner	AYE

Additional Discussion

The BZA discussed options for improving procedures for the future. There were several suggestions, including introducing an intermediate step in the building permit procedure, having a foundation permit/approval followed by a construction permit, and/or a certified survey be taken when the foundation is dug. There was a suggestion that models from the Town of Ithaca could be useful. The

question of additional expense in permitting process were seen as negligible as compared to the expense of going through the BZA variance process.

The BZA will draft a letter and proposed resolution to the Town Board alerting the Town to a potential loophole in the zoning ordinance and recommending specific improved procedures.

Adjourn

The Meeting was adjourned at 7:57 pm.

Pamela S Goddard, Board of Zoning Appeals Secretary