

**Danby Board of Zoning Appeals
Minutes of Hearing and Meeting
March 27, 2018**

Present:

Gary Bortz,
Lew Billington
Toby Dean, acting Chair
Betsy Lamb

Others Present:

Acting Secretary Pamela Goddard
Planner CJ Randall
Public Leslie Connors, Ted Crane, Mike Amodie, Deborah Friends, Carl Gartlein, and others

Appoint Acting Chair

BZA Chair was not able to attend this hearing. The other members moved to Appoint Toby Dean as acting Chair. Dean accepted this role.

Approve Minutes

Toby Dean asked for a voice approval of the minutes of the November, 2017 BZA hearing. These minutes were approved unanimously.

Statement of the Chair

The applicant was informed that, while the Board of Zoning Appeals is a five member board, only four members were able to be present for this hearing. A majority of three votes is needed to pass a variance request. A two-two tie vote results in a non-approval of a variance request. The applicant has the option to have their variance request heard at another time, when there is a full board present. The applicant indicated that he understood and that he was satisfied to have the hearing proceed in this case.

BZA Acting Chair, Toby Dean opened the hearing at 7:03 pm

PUBLIC HEARING to consider a request for an Area Variance, Curtis Road, Tax Parcel 23.-1-10.2, Deborah A. Friends, Owner and Michael Amodie, Applicant; Appeal regarding property on Curtis Road and Hill Road (tax parcel 23.-1-10.2) for an Area Variance from the Zoning Ordinance Section 600(4)(a) requirement that road frontage be located on a public road maintained year-round. The Applicant proposes to subdivide the existing 109.77-acre property into two parcels: Parcel A, measuring 4 acres and undeveloped, to remain undeveloped on Curtis Road; and Parcel B, measuring 105.77 acres and undeveloped.

Public Comment

There was no written correspondence related to this variance request.

Dean noted that this variance request had been heard previously (in November, 2017) and that the applicant had opted to table the consideration until this time.

Michael Amodie made comments in support of his variance request. As stated previously, he has already been using the property for his desired purpose of camping and hiking with the permission of the property owner. He now wishes to own the property outright. He is willing to release his right of development towards this end. He stated that he is the only person who uses this property and that he has not had any problems with the neighbors.

There was a discussion of electric service and minimal development (a cell tower and adjacent structure on a neighbor's property) in this area. Gartlein confirmed that there is electric service there, for the cell tower on his property.

Lamb asked the applicant if it would make a difference to him if he could never build on this lot? Amodie answered that this would not be a concern for him and that he has no plans to build. Dean asked where he parks his camper. Amodie answered that it is near a neighboring property border.

Lamb asked for clarification, as to whether a variance continues on a parcel with a new owner? Planner Randall confirmed that the variance is attached to the land. Randall noted that Danby zoning precludes the creation of lots without a required amount of road frontage, which is maintained year 'round. The request for variance is in relation to this particular area of the zoning code. The Board, as it sees fit, may impose conditions (such as "recreational access only" or "no building permits will be issued") on a variance. There was a question regarding setting precedence in granting a variance. Randall noted that a precedent is set only if the conditions are identical.

Bortz raised a question regarding restricting further development on the 105 acres of this property (to be retained by Friends) with no road frontage. He expressed concerns that any further subdivisions have appropriate road frontage. He was also concerned about the cost of road improvement to the Town and related concerns regarding hazards to first responders to a property without a fully maintained road.

Randall clarified the role of the Board of Zoning appeals in relation to subdivision approvals and conditions. Attaching conditions to subdivisions is outside of the purview of the BZA. Subdivisions are considered and granted by the Planning Board. Randall clarified that, in this case, two processes were taking place at the same time, with hearings before both the PB & BZA.

Bortz directed questions to Deb Friends regarding her long-term plans for the property, specifically whether she planned to sell off other parcels. Friends responded that she had no intention to sell off other parcels. This specific situation involves a long-term and multi-generational agreement with the Amodie family to use the land. Previous subdivisions, done by her mother, were all to friends and family.

Comments were made by Ted Crane regarding the five areas for review for a variance request. Crane noted that the need for variance is self created and that there could be feasible alternatives to the variance. However if there was a condition that guaranteed that no permanent structure be built, Crane had no objection to the variance request. Crane noted that this restriction should be written carefully.

Lamb asked whether Amodie would be interested in a parcel on Hill Road, which would provide the needed road frontage? Friends clarified that this suggestion was for a right-of-way to the parcel which Amodie wants to acquire. This would require a right-of-way of 20 acres. Lamb agreed that this was an extensive right-of-way for a four-acre parcel. Mr. Amodie clarified that he only wants (and can afford/handle) a four acre piece in a specific location.

Close Hearing - Open Meeting for Discussion at 7:26 pm

Consideration of the Variance Request

The BZA discussed the particulars of this variance request. Dean reflected on comments from the Planning Board, and the consideration that the applicant is essentially trying to buy a woodlot and there should be a way to sell it as such. Dean stated that this made sense to him, and added that figuring out the future of the entire parcel is beyond the purview of the Board of Zoning Appeals.

Bortz commented that granting this variance is like spot zoning. Bortz noted that the Planning Board minutes indicate that they would approve the subdivision on the condition that the parcel remains a wood lot. Therefore the BZA would need to create language to prevent any building permit from being issued for the property. Amodie repeated his assertion that building a permanent structure is not his intention and is not consistent with how he has used the property for 30 years.

Dean stated that he was comfortable with adding a condition of restriction on the property, related to building. There was a discussion about how to write such a condition. Part of the discussion was further clarification about the requirements of zoning related to subdividing a property without sufficient road frontage on a maintained road. The zoning limitation is on the creation of a lot. If the variance is approved, the subdivision then goes back to the Planning Board for its review and approval. Any conditions or restrictions put on the variance will proceed with the subdivision consideration.

There was a discussion of the hypothetical situation that the seasonal road is improved in the next 10-20 years. There were some questions as to whether this would change the variance condition. Randall clarified that the zoning condition is in regards to a public maintained road. It was noted that much of the rest of the surrounding property is State land, and would not be developed. There is a seasonal structure, a cabin, on a neighboring property. Randall clarified the requirements for a seasonal dwelling, such as a cabin. There was further discussion of the conditions needed to improve a seasonal road.

Determination of the Variance Request

The BZA reviewed the five areas of consideration as relates specifically to this variance request: Concerning the property at the following address - Curtis and Hill Road, tax map # 23.-1-10.2 requesting variance from Zoning Code section 600(4)(a), sufficient road frontage on a publicly maintained road.

1. Whether undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties? Mr. Gartlein stated he had no objection to the variance. Bortz noted that there are two seasonal dwellings already in the neighborhood. One more would not affect this neighborhood. The Board was in agreement that there would be no undesirable change.
2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance? The applicant and property owner stated that they did not want the encumbrance of a lease on the property, as an alternative. The Board was in agreement that, given the particulars of this case, there was no reasonable alternative.
3. Whether the requested variance is substantial? The Board was in agreement that this is a substantial request, but that the impacts could be mitigated.
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood? The Board was in agreement that there would be no adverse impact.
5. Whether the alleged difficulty was self-created? The Board was in agreement that this difficulty is self-created.

After taking into consideration of the above five factors, the BZA finds that the Benefit to the Applicant Does outweigh the Detriment to the Neighborhood or Community for the following reason: if the parcel is unimproved, there is no detriment.

MOTION TO GRANT VARIANCE:

The Board of Zoning Appeals of the Town of Danby **finds that an Area Variance from section 600(4)(a) of the Danby Zoning Code should be granted**, (a request for an area variance from the road frontage located on a public road maintained year-round required in section 600, paragraph 4 of the Town of Danby Zoning Ordinance in order to proceed with a minor subdivision of the property), with the following condition:

The Board of Zoning Appeals finds that the following condition is necessary in order to minimize adverse impacts upon the neighborhood or community: There shall be no building permit issued for the construction of a permanent structure (as defined by the NYS Building Code) without a suitably improved and publicly maintained road. This is to minimize the adverse impact of community health and safety and access for 1st responders.

Moved by Bortz, Second by Billington, the motion passed

Lew Billington AYE

Gary Bortz AYE

Betsy Lamb AYE

Toby Dean AYE

Adjournment

The Meeting was adjourned at 7:55 pm

Pamela Goddard, Board of Zoning Appeals Acting Secretary