

Town of Danby Board of Zoning Appeals
Minutes of Hearing and Meeting
October 23, 2018

PRESENT:

Lew Billington
Gary Bortz
Betsy Lamb
Toby Dean (Acting Chair)

ABSENT:

Earl Hicks

OTHER ATTENDEES:

Town Planner	C.J. Randall
Town Councilperson	Leslie Connors
Recording Secretary	Alyssa de Villiers
Public	Jennifer Cottrell, Adam Coyle, Meaghan Dalton Walsh, Nancy Medsker

The meeting was opened at 6:59pm.

CALL TO ORDER/AGENDA REVIEW

No changes were made to the agenda.

MINUTES APPROVAL

MOTION: Approve minutes from the September 25th meeting

Moved by Bortz, seconded by Lamb

The motion passed.

In favor: Bortz, Lamb, Dean

Absent: Billington

PUBLIC HEARING

The Town of Danby Board of Zoning Appeals will hold a Public Hearing at 7:00 p.m. on October 23, 2018 at the Danby Town Hall, 1830 Danby Road, Ithaca, NY, to consider the application of Jennifer Cottrell, owner of property at 90 Marsh Road (tax parcel 12.-1-5.1) for an Area Variance from Zoning Ordinance Section 600 (6)(b) 50 feet side yard requirement and Section 600 (6)(c) 75 feet rear yard requirement. The Applicant is appealing the decision of the zoning enforcement officer denying permission to construct a two-story, 24' x 30' addition onto the existing single-family residence, which was constructed in 1965. The lot is a Nonconforming Lot of Record as described in the Town of Danby Zoning Ordinance

Article X, Section 1000. The property is in the Low Density Residential Zone, requiring a lot area minimum of 2 acres, frontage of 200 feet, and lot depth of 300 feet.

The public hearing was opened at 7:03pm.

Public Comment

No letters were received from the public regarding this area variance appeal.

The applicant, Jennifer Cottrell, is working with Brotherton Construction; Meaghan Dalton Walsh, a landscape architect, presented drawings of the proposed structure. She explained that an existing one-story study and deck on the south side of the house will be replaced with a garage at ground level, a study/living space on the main floor level, and above that a master bedroom with bathroom. This will increase the footprint by 420 sq. ft (if the deck is included in the existing footprint). She showed a drawing depicting what the 50' and 75' yard requirements would leave as buildable area, and as this is a small and non-conforming lot, it would only be a thin triangle in the middle of the property. As it is, the house is already in violation of the zoning setback and lot size requirements; the lot is 0.7 acres. The applicant stated that she would like more space with her current family size. After the addition, the house will be a three bedroom, two bathroom structure with a one-car garage.

One neighbor, Nancy Medsker (67 Marsh Rd.), was absent for the public hearing, but was able to comment later in the meeting. She asked about the number of stories and the footprint of the expansion. She said she was not dead set against it, but felt that it seemed big, and that code was there for a reason. She was worried about seeing additional lights with the height of the proposed addition. Bortz asked her whether she currently saw lights, to which she answered no. It was explained that the height was within the limit, so that was not a question at issue. Dalton Walsh showed more drawings that she thought better showed the size in relation to the house, and Medsker added that at least it was using an existing structure.

Discussion

Randall clarified that this lot has not changed since it came onto the records in 1965; the applicant bought the house five years ago. Dean pointed out that there is a tree line on the south side, and that the neighbors are relatively far away. He also asked about what the possibilities would be regarding a home-based business; in this zone it is possible to have one as long as there is no external evidence except for a sign. Bortz asked about whether it was possible to gain land from the neighbors, and whether the applicant had looked into this option. The applicant had investigated this and found out the property to the south is in foreclosure and is now government-owned. Bortz also asked about septic requirements, to which Dalton Walsh said that they had spoken with the Health Department and had a letter stating the existing septic could take the additional load. Billington asked about the possibility of another house going up on the property to the south, but the lot size is too small to create a new parcel. Lamb confirmed that the Board was strictly looking at the footprint; the height limit is 36' and the proposed structure is not in violation of this.

The public hearing was closed at 7:19pm.

AREA VARIANCE FINDINGS & DECISION

The Board of Zoning Appeals considered the Appeal of Jennifer Cottrell, owner of property at 90 Marsh Road (tax parcel 12.-1-5.1) for an Area Variance from the Zoning Ordinance Section 600(6)(b) 50 feet side yard requirement and Section 600(6)(c) 75 feet rear yard requirement. The property is in the Low Density Residential Zone. All four present Board members had visited the site to aid in their evaluation.

1. The Board agreed that no undesirable change would be produced in the character of the neighborhood or any detriment to nearby properties. There are many trees and no houses in the immediate vicinity, and the lot has always been non-conforming. The second story may be visible, but the footprint not the height was in question; the height did not seem offensive. The proposed variance will also reduce an existing non-conforming structure.
2. The Board agreed that the benefit sought by the applicant could not be achieved by a feasible alternative of the variance. Because the lot is non-conforming, and has been so at least since 1965 when it was first recorded, the only alternative would be to purchase additional land; the applicants did look into this, but it did not seem feasible. Dalton Walsh also pointed out that they had selected the location where there was the largest possible distance to the property boundary (besides adding to the west). Any addition would be in violation of the setback requirements.
3. The Board agreed that the requested variance was substantial. The existing house is already too close to the lot line, and the addition will bring it closer.
4. The Board agreed the variance would not have an adverse impact on the physical or environmental conditions in the neighborhood. There is a tree line and significant distance between neighboring houses. The health department had already been consulted about the proposed bathroom. In response to a question about the proposed shift in driveway location, it was explained that it will only be a slight modification. There are no unique geological features, classified bodies of water, or State or National wetlands on or within 100' of the property.
5. The Board agreed that the alleged difficulty was not self-created. The purchased lot has always been non-conforming; the only way to avoid the need for a variance entirely would be to not build at all. This was not felt to be an egregious act of self-creation or a purposeful violation.

Based on the above five factors, the BZA determined that the Benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community. Referencing "Drawing No. 3, Proposed Site Plan - 24 x 30 Addition" prepared by Brotherton Construction LLC for 90 Marsh Road, Danby, NY dated 09-10-2018, a 51'-10" rear yard setback, 17' north side yard setback, and 33' south side yard setback were found to be 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. The Board did not add any conditions to the variance.

MOTION: Grant Area Use Variance

Moved by Billington, seconded by Lamb

The motion passed.

In favor: Billington, Bortz, Lamb, Dean

ADJOURNMENT

The meeting was adjourned at 7:45pm.

Alyssa de Villiers – Recording Secretary