

TOWN OF ESOPUS
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Zoning Board of Appeals

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TOWN OF ESOPUS ZONING BOARD OF APPEALS
Minutes of the February 21, 2012 Meeting

CALL TO ORDER: Chairman, Don Cole, called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Vic Barranca, Sean Fitzgerald, Joe Guido, Karl Wick, and Chairman, Don Cole.
Kathy Kiernan and Linda Smythe were excused.

MINUTES

Joe made a motion to approve the January minutes as written. Seconded by Vic. All in favor.

VOUCHERS

Vic made a motion to approve the voucher for secretarial work. Seconded by Karl. All in favor.

PUBLIC HEARING

11-15-11-01

Wapner & Courmont
135 River Road

64.1-2-6
area variance

Chairman Cole stated that this public hearing is continued from last month and he made a **motion to close the public hearing because the applicants' representative has rescinded the application. Motion seconded by Vic.**

Vote: Karl	Yes
Vic	Yes
Joe	Yes
Don	Yes

Board member, Sean Fitzgerald, arrived after the vote.

PUBLIC HEARING

01-17-12-01

Dawn Ellsworth
161 Hasbrouck Avenue

56.59-6-4
2 area variances
1 use variance

Chairman Cole opened the public hearing and asked if anyone was present to address this issue. Joan White, 162 Salem Street, stated that the chicken coop is “in her backyard” and she opposes the variances because she is afraid that the chickens will bring rodents and a foul odor. Vic asked if the smell and rodents is a new problem or has it been going on for years. Ms. White replied that they never had a problem with a smell or rodents, but that chickens bring rats and mice. Vic asked if it was a problem now and Ms. White said no. Joe asked if Ms. White was opposed to the coop or the chickens and she answered, “both.” She mentioned that she was OK with a variance for a shed years ago, but she is not in favor of a chicken coop.

Chairman Cole stated that he thought the chickens spent a great deal of time indoors. Ms. White replied that she didn’t even know how many chickens applicant has. Chairman Cole asked applicant if the chickens were kept inside or in the coop and Ms. Ellsworth answered that they go outside in the side yard during the day and they have the coop for shelter. They come inside every night and spend a majority of the time in the house. Ms. Ellsworth explained that she has three chickens which have been with her between 7 months and 5 years. She went on to say that the yard and coop are cleaned every night. There will be no rats because she is meticulous inside and outside.

Joe asked Ms. Ellsworth to explain her case for the public hearing. Ms. Ellsworth stated that she is before the Board because she got an Order to Remedy Notice from the Building Department stating that her chickens, the coop, and fence were in violation of Town of Esopus Codes. Ms. Ellsworth believes this was a direct result of her complaints to the animal warden about her neighbors’ 5 barking dogs. She explained that her 3 chickens are all rescued, disabled animals and she described their disabilities. Applicant passed out photos and stated that they are not livestock, but are her pets. She does not have them for eggs. She feels that they are members of her family.

Ms. Ellsworth explained that she did not get a building permit for the coop because it replaced a structure that was basically the same size, about 2-3 feet higher. She distributed photos of the original structure, a release cage for wildlife. She feels that the new structure is a nicer looking structure.

Applicant submitted letters of support from representatives of various agencies and neighbors as well as the medical records of the three chickens.

Ms. Ellsworth distributed photos of the 3 foot lattice that was added to her 6 foot high stockade fence. She did this for privacy which benefits the neighbors as well.

Karl asked Ms. White if she had actually seen rodents. Ms. White replied that she had not seen any rodents. Karl asked if that was the case with the smell also and Ms. White replied, "yes." Karl stated that she is afraid of the possibility of these things and Ms. White agreed.

Anthony Mignone, 805 Broadway, stated that he was a good friend of Tina Motlock who was the previous resident. He stated that she had chickens in that house and yard in the 90's.

Rebecca Moore, a resident of Woodstock, stated that she has worked at Woodstock Animal Sanctuary and met applicant there because Ms. Ellsworth volunteers there. Ms. Moore also owns rescued chickens and stated that applicant's house and yard are extremely neat and clean, "almost like a museum." She described the environment as "almost obsessive, in a good way." Ms. Moore also commented on the size of the chickens. They are tiny, not like other chickens raised to be obese. She stated that the amount of waste produced by birds this size is miniscule.

JoAnna Mignone, 355 Mountain View Avenue, stated for Ms. White's benefit, that the chickens have been there for years and she didn't realize it. Rodents or an odor would have happened already.

Ms. Moore added that rats would be dangerous to the small chickens so that is added incentive for Ms. Ellsworth to keep the yard and house waste-free.

Vic asked applicant what she did to keep the yard and coop clean. Ms. Ellsworth replied that she cleans the side yard and coop every day. She stated that she has obsessive-compulsive disorder which makes her obsessively clean. She picks up all the waste every night from the yard and the coop. She explained that this benefits her chickens as they all have health issues.

Vic asked the Board if a variance was granted, are there conditions we can add, for example, as long as the yard is maintained, no complaints, etc.? Joe replied that the Board can put in stipulations specific to this case.

Bernadine Quimby who lives across the street from Dawn stated that for the time that she has known Dawn or her sister, there has never been the possibility of waste in the yard. Her granddaughters have visited the chickens, sat in the coop and on the lawn. Also, there has never been any smell. She stated that the chickens were keeping the ticks away from the neighborhood.

Karl asked applicant how she stored the chickens' food and where. Ms. Ellsworth replied that it is in her basement in a rubbermaid-type container. Karl asked how she disposed of the droppings and applicant replied that she puts them in a plastic bag out with her garbage.

Ms. Ellsworth pointed out the date that the original structure was on the property and explained the reason behind the lattice. She believes that the neighbors are harassing her, placing trailers and tarps in her view and cutting down trees. Applicant maintains that she is trying to get some privacy. She pointed out a photo of the neighbors' yard and depicted that as the threat of rats to the neighborhood. She described them as "extremely untidy." Applicant re-stated that she has had chickens for 6 years, the coop for 6 years and the lattice has been added to her fence for at least four years. There have been no complaints until Ms. Ellsworth complained to the dog warden about the neighbors' dogs.

Joe stated that he spoke with the Building Inspector to find out why there is a height limitation on fences. It is so that the owner of the fence will be able to maintain the fence without going onto a neighbor's property. He asked if applicant can take down the lattice to maintain it and then put it back up. Ms. Ellsworth replied, yes, that it is erected from her side of the fence - framed lattice screwed into her side of the fence. Karl asked if it was pressure-treated wood and applicant replied, yes.

Wayne Hoyt, 202 Bowne Street, asked if the variance is approved tonight would there be stipulations that there will be no more than the three chickens that are there and that they cannot be replaced as they passed.

Joe replied that they would take his comments into consideration. Mr. Hoyt asked that they consider not allowing applicant to replace these chickens as they pass.

Ms. Ellsworth stated that she is fine with 3 chickens, doesn't want to have more than 3, but finds it discriminatory that she would be asked not to replace them when they pass.

Rebecca stated that, as a person who has worked in an animal sanctuary, (she knows that) great homes for injured, abused birds are incredibly hard to find and she would be sad if Ms. Ellsworth's birds passed and she could not fill that spot with another bird. These three birds have proved not to be a burden on society.

Joe explained to Ms. Ellsworth that the Board is short two members tonight and, if a vote is taken and one Board member denies the variance, she will be refused the variance.

Joe made a motion to close the public hearing for Ellsworth. Seconded by Karl. All in favor. The public hearing was closed at 7:30 pm.

Joe asked applicant if she wanted to go forward with the vote tonight and she replied that she did.

Vic made a motion that the Board vote on this case, seconded by Karl. All in favor.

Karl stated that the primary issue in front of the Board, fence and building a different issue, is the question are these chickens livestock or are they pets. If they are pets, the use variance becomes unnecessary. In Karl's opinion, weighing all the evidence and doing a lot of research on his own, he believes they are pets. He went on to say that livestock gives some kind of financial gain – eggs, meat, wool, fur, breeding stock. Applicant gets none of these things. His opinion is that they are pets and the use variance is not necessary.

Joe agrees that the Board can say they consider the chickens pets, but he thinks they have to cover themselves with stipulations regarding removing waste. Ms. Ellsworth may be cleaning diligently now, but the person after her may not clean the same way. Waste should be removed in such a manner as to not create an odor. He added that annual visits to the vet should be stipulated as well and the limit of three chickens.

Chairman Cole stated that he had a problem with the number three. He said, "Four chickens is no more work than three and the way this woman feels about her chickens, they can get nothing but good care and that is more important than anything – taking care of whatever animals you have." He added that stipulating too much is not necessarily the right move, as far as the number of chickens is concerned.

Joe stated that he would like to leave the number at three. If applicant wants more, she can come back for another variance. He added that the Board needs to put some kind of a limit. Vic agreed that there needs to be a limit whether it is three or four.

Karl mentioned that he had worked with "cat ladies" who start out having 3, then 10, 20 and continue to acquire great numbers of cats. It becomes an obsession – collecting cats.

Joe made a **motion that a variance be granted to allow the three chickens with the following stipulations:**

- **that the waste matter be removed in such a manner as to not create an odor**
- **that the chickens have annual visits to a veterinarian**
- **that there will not be more than three chickens on the property at one time**

Motion was seconded by Sean.

Vote:

Karl – In favor. I don't see any detriment to the neighborhood with this particular situation. It appears to be very well controlled. The benefit to the applicant and to the chickens far outweighs any detriment to the neighborhood. I can find no evidence anywhere that we regulate keeping pets other than dogs. There's nothing about cats, or lizards or snakes – they're considered pets. I don't see any down side to granting this.

Sean – In favor. The motion as proposed, I'm in favor.

Vic – In favor. I'm in favor. I don't see any major problems with this as long as it doesn't jeopardize the character of the neighborhood- and it doesn't, things are

maintained as they are now and the number not to exceed three, I'm good with this.

Don – In favor. I don't see any downfall to it.

Joe – In favor. I feel that they are pets and she has given us proof and verification of it and that they are taken care of as pets.

Motion passed.

Joe stated that another issue before the Board is the height of the fence.

Karl asked applicant if the lattice is on the side fence or only the rear. She replied that it is on both side and rear.

Chairman Cole noted that most of the lattice is for visual purposes and could come down if it had to – it has nothing to do with the chickens. Ms. Ellsworth agreed and explained that she put it up to block out the unsightly view that the neighbors had created. She mentioned tarps, trailers, RV's and a trampoline and added that the privacy is for the neighbors as well as for her.

Karl asked, "How high is the total fence, including the lattice?" Applicant replied about 8 feet. Vic asked if the lattice was always there, just replaced. Applicant replied that it was not there.

Karl made a **motion that a variance be granted to allow a lattice extension at the top of the fence of up to 60 feet in length and a total height not to exceed 8 feet 6 inches.**

Motion seconded by Chairman Cole.

Vote:

Joe – In favor. The owner has stipulated that she can maintain the fence without crossing on to the neighbor's property, which is why the Town has the height restrictions.

Vic – In favor. I don't believe this is jeopardizing the character of the neighborhood, actually I think it is protecting the character of the neighborhood.

Sean – In favor. For reasons similar to Vic's, I'm in favor.

Karl – In favor. However, if it were not a lattice fence, but a solid fence, I would be against it because that would restrict air flow and light; this does not do that. It is a minimal restriction on light, certainly. I know all about small lots and neighbor's yards and privacy. I think that's a bigger issue than this Board can even deal with. There should be something in zoning law – a change in the law. However, it's the first time it has come up and we get to vote on it. I vote in favor.

Don – In favor. I vote in favor also.

Motion passed.

Chairman Cole made a **motion to approve the chicken coop. Seconded by Vic, with the provision that it doesn't get any larger than it is now.**

Vote:

Karl – In favor. Although this clearly violates zoning. Its been there a decade. No one has complained yet. I think the onus would have been on the Town to make a point of this much earlier, and certainly the neighbors, if they didn't like it. Again, because its been there so long and no one has even noticed it, I don't think there is any detriment to the neighborhood. It's a tiny lot. Maybe there are other places you could put, maybe not, but I think this is a good solution. I vote in favor.

Sean – In favor.

Vic – In favor.

Don – In favor.

Joe – I am not in favor. I would not grant this variance. I don't think anybody should build anything right on the property line, especially a coop.

Motion passed.

Joe stated that the Board had to vote on the Bed & Breakfast (Wapner & Courmont, 64.1-2-6-) and made a **motion to deny the variance because applicants rescinded the application and that the Board would not hold it against them if they decided to re-open the case.**

Motion seconded by Sean.

Vote:

Karl – In favor.

Sean – In favor.

Vic – In favor.

Don – In favor.

Joe – In favor.

Motion passed.

Chairman Cole made a motion to close the meeting. Seconded by Joe. All in favor.

Meeting adjourned at 7:47 p.m.

Respectfully submitted,

Joan Boris, Secretary
Zoning Board of Appeals