

**TOWN OF BALLSTON  
ZONING BOARD OF APPEALS**

**Regular Monthly Meeting August 2, 2017**

Present: Michael Lesniak, Chairman  
Marilyn Bell, Vice Chairwoman  
Ellen Brown  
Robin Kane  
Stephen Merchant  
Dan Mertzluft  
Daniel Russell  
Brian Theriault, Building Inspector  
Peter Reilly, Esq.  
Members of the General Public

ABSENT: Tim Long, 1  
Brian Theriault, Building Inspector  
Peter Reilly, Esq.

Chairman Lesniak called August 2, 2017 meeting at 7:30 p.m. and Mr. Russell led the Pledge of Allegiance.

Chairman Lesniak asked for the corrections to the July 5, 2017 minutes.

Page 1 Present "Add Ms. Bell", page 2, 2<sup>nd</sup> paragraph add "is", 7<sup>th</sup> paragraph strike "on" add "a"  
page 3, 8<sup>th</sup> paragraph add "A" after 280, page 5, 6<sup>th</sup> paragraph strike "Ms. Bell stated she did not believe so." 8<sup>th</sup> paragraph strike "no" add "yes"

**MOTION:** Mr. Russell made a motion to accept the July 5, 2017 minutes as amended. Ms. Brown seconded the motion; Ms. Kane abstained; not present at the July 5, 2017 meeting.

**CARRIED.**

**James & Theresa Legnante – Public Hearing Scheduled  
19 Thomas Avenue; 216.56-1-57  
Area Variance pursuant to § 138-8.1**

**Lot area, width and front setback variance to allow a new home, with municipal water and private septic system.**

Chairman Lesniak read the applicant's narrative – "New construction of a single-family residence in keeping with the existing character of the neighborhood."

Chairman Lesniak stated the applicant went through and identified the various configurations of the surrounding properties.

Chairman Lesniak asked if that has always been a lot.

Mr. Legnante stated yes.

Chairman Lesniak asked if there was ever a home on that lot.

Mr. Legnante stated no.

Ms. Brown asked the applicant how long he has owned the lot.

Mr. Legnante stated since 1999.

Mr. Merchant asked if any neighboring homes have wells or are the existing homes hooked up to municipal water.

Mr. Legnante stated the existing homes are hooked up to municipal water.

Chairman Lesniak stated that the adjacent properties have to be 100' away from a septic system with an existing well.

Mr. Merchant asked if the applicant could move the proposed 30' setback farther.

Mr. Legnante stated the farther back you move the house, it starts to look unusual; room is need for an approved septic system.

Mr. Legnante stated I guess it could go back a little bit, but the older I get, the more I don't want to shovel or remove snow.

Chairman Lesniak stated that it is illegal to back out onto a road and asked if a turn-around could be constructed.

Mr. Legnante stated very possible or very likely a turn-around would be constructed

Chairman Lesniak asked the applicant if they plan on building a house for themselves

Mr. Legnante stated we are thinking about it and right now, but doesn't know what they are going to do.

Ms. Bell asked if there is any other vacant property next door.

Mr. Legnante stated no. Mr. Legnante has a vacant lot (40' x 100') next to the garage and is using the lot, which is not buildable and does not think there is any other vacant properties on the street.

Mr. Russell asked if the proposed house is to the wall of the house or to the overhang; what portion of that structure is 30'.

A further discussion was held on the proposed 30' setback to the foundation or the eave.

Mr. Legnante stated he is proposing a modular home with a basement for the property.

Chairman Lesniak stated it's supposed to be measured to the eave.

Chairman Lesniak said, "It looks like you could bring that back some more than 30' and try to grant the minimum variance."

Mr. Legnante stated a lot of space is taken up by a septic system, a shed for lawnmowers, and a carport. Mr. Legnante stated he does not need a closed garage because he is gone in the winter.

Chairman Lesniak stated it's rare for the Board to grant this much of a setback, but realize that the applicant is limited to the size of the lot.

Ms. Legnante stated all the existing houses on the road have similar setbacks near the road.

Mr. Russell asked if a porch is proposed in the front of the proposed house.

Mr. Legnante stated no.

Chairman Lesniak asked if the applicant knows how much the overhang will be.

Mr. Legnante stated 18" to 24".

Chairman Lesniak stated then that means the applicant needs a 32' setback variance.

Ms. Kane asked is there is reason it is configured on the lot at such an angle.

Mr. Legnante stated the lot itself goes in at an angle and wants to keep the house square to the road; it will be crowded in the back with a septic system.

Ms. Brown asked when the applicant is hoping to start construction.

Mr. Legnante stated construction is up in the air; there are no plans at this time.

Chairman Lesniak opened the public hearing at 7:57 p.m.

No one wished to speak.

Chairman Lesniak closed the public hearing at 7:58 p.m.

A further discussion was held on the proposed front setback.

Mr. Russell asked how the Board resolves the front setback.

Chairman Lesniak stated the applicant needs a variance of 32' the way the application is in front of the Board.

Chairman Lesniak stated the board has a problem with the proposed setback.

Mr. Legnante stated if the overhang has to be 30' off, he can go with the 2' and does not see where that is going to make a big difference.

Chairman Lesniak stated if the applicant goes too far back will be encroaching on the neighbor's property.

Mr. Merchant went through the five criteria for an area variance.

1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. The Board concurred no.

2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. The Board concurred no, there is no land available.

3) Whether the requested area variance is substantial. The Board concurred yes.

4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Board concurred no.

5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. The Board concurred yes.

**MOTION:** Ms. Bell noted that this is a **Type II action** under the SEQRA process therefore exempt from further review.

**MOTION:** Ms. Bell made a motion to the property at 19 Thomas Avenue pursuant to §138-8.1 for the construction of a single-family home (new construction) an area variance of 16,921 square feet, lot width variance of 39.8' and a front yard setback of 30' be granted for said construction and a stipulation of no backing out onto the road and build a turn-around on the lot (driveway must have a turn-around). Mr. Merchant seconded the motion and all present voted in favor. **CARRIED.**

**Margaret Tufo – Public Hearing Scheduled**

**2 Townley Drive; 257.11-1-7**

**Special Use Permit pursuant to §138-8**

**To allow for chickens**

Chairman Lesniak read the applicant's narrative – "I live alone and wanted to revisit an old hobby of mine. I teach sustainable living and care respect of animals to my inner city students."

Chairman Lesniak stated the applicant provided comments of the four criteria of a Special Use Permit and will visit that later in the meeting and go over each question and address them. The board concurs with Chairman Lesniak.

Chairman Lesniak asked the type of chickens.

Ms. Tofu stated Silkie the Bantum breed.

Mr. Merchant asked what is done with the manure.

Ms. Tofu stated presently she is learning how to compost with their manure, mix up from what she has from the kitchen, learning on how to make good compost and will put on her flower garden.

Chairman Lesniak asked how long the manure will be removed from that area.

Ms. Tofu stated every other day and there are only three chickens so there is really not a lot to clean up.

Mr. Merchant asked how the feed is stored.

Ms. Tofu stated it's stored in a mud room area and not open to predators, but can get a Rubbermaid bin.

Chairman Lesniak stated for the applicant should get a bin for the feed.

Chairman Lesniak asked if applicant anticipates more than three chickens, should ask for more chickens.

Ms. Tofu stated no she is good with three chickens.

Chairman Lensiak opened the public hearing at 8:05 p.m.

**Todd Fischer, 70A Lakehill Road** stated he spoke with Ms. Tofu before the meeting and explained that he is a builder/developer and understand people that speak against things, but we all have to agree this is an agricultural use and we live in a Hamlet area in the Ballston Lake Overlay District (BLOD). Therefore, you have to look at what the zoning regulations call for and have no problem with Ms. Tofu having hens, but the problem is the roosters; have that down further on Lakehill Road in the old Merriam property and have been woken up by roosters and

there have been horses over there and that is also in the (BLOD). Mr. Fischer stated within the (BLOD), the agricultural use is controlled by definition of agricultural use (it's in the Town's zoning ordinance), which states "ordinarily the raising of crops, livestock, poultry, fruit or fur bearing animals where the interpretation is required and determined whether particular activity constitutes a customary agricultural use. The Zoning Board of Appeals shall consider well said type of activity is traditional within the Town of Ballston and is recognized as an agricultural pursuit by a government agency or by an agricultural bureau." The NYS for Ag & Market defines and agricultural use in various places as being more than seven (7) acres and that you have a gross annual income from that use of over ten thousand dollars. We are in a Hamlet not in an Agricultural District therefore, does not believe this Board can consider this application simply because of the law. Mr. Fischer said if we want to change the law, let's change the law, but that's the law.

Mr. Mertzlufft stated but by definition, this is not an agricultural use because it does not fit within those criteria.

Mr. Fischer stated within your zoning ordinance, agricultural use as defined as the raising of crops, livestock, poultry fruit, fur bearing animals where interpretation is required and determined whether a particular activity constitutes a customary agriculture use.

Mr. Mertzlufft stated this is not a customary use.

Mr. Fischer stated it is defined by NYS Ag & Markets.

Mr. Mertzlufft stated customary means – routine and rogue and a repeatable thing as in a customer. This is not a customer use, there is nobody that is going to create a marketplace and willing to guess that agriculture will be used for personal use.

Ms. Tofu agrees.

Mr. Mertzlufft stated there is no money being made; by definition this is not an agriculture use.

Chairman Lesniak read the following in the Town's Zoning Ordinance – Hamlet Residential District.

**Hamlet Residential District** – Special Use Permit for agricultural operations with custody of animals – it is permitted with a Special Use Permit per the Town's zoning.

Mr. Fischer stated the Board should consult with their attorney; Mr. Reilly is not here this evening. Mr. Reilly normally is in attendance.

Mr. Fischer stated before the Board does anything, the Board should consult with Mr. Reilly Esq. because he is just simply reading from the ordinance.

Mr. Fischer stated he understands what Mr. Tofu is proposing, but wants to point out that if the Board were to approve this application (SUP), would not be in accordance with the zoning.

Chairman Lesniak stated its right in the zoning.

Mr. Fischer stated he is going on what that chart reads and actually what is written in the zoning ordinance and goes onto say...that you must consider what is recognized by the agricultural pursuit by the government agency (does not know who that government agency is), but telling the Board that NYS Ag & Markets of the agricultural uses.

Mr. Fischer appreciates what Mr. Mertzlufft is staying and appreciates it and that is a good question – “Is this really and agriculture use or not, but we are in a Hamlet and houses that are fairly close together and would not normally consider this; other issues going on in the Town and will discuss with Town Board.” Mr. Fischer stated he is not adversarial against Ms. Tofu, but pointing out what the law says and really needs to think that the Board should consult with their attorney.

Chairman Lesniak stated the ZBA has done this with our attorney on numerous cases and this is not the first time. The one requirement the Board will make is that the applicant is not allowed to have a rooster.

Mr. Fischer does not know how agricultural defines and if it makes any difference.

Chairman Lesniak stated the rooster is more aggravating to the neighbors.

Mr. Fischer is disturbed as to what is happening down the street from his property.

Mr. Fischer stated what the Board needs to do in this particular instance of what is being brought up here, needs to be brought up with the Boards attorney so you don't get yourself into an Article 78.

**Al Pirigyi, 70 LakeHill Road** submitted a letter to the ZBA, which was read into the record (**see attached**).

Chairman Lesniak stated second from the last paragraph stated this owner at 69 LakeHill Road is being denied due process and is planning to communicate to the zoning Board – what do you mean by that.



Mr. Pirigy stated he contact his real estate agent as soon as he received the notification from the Town. His real estate agent contacted the home owner Mr. Zipp who finally called Mr. Pirigy today who did know about the application. Mr. Zipp has no other way than Mr. Pirigy speaking on his behalf.

Chairman Lesniak has a concern with the comment being denied due process.

Chairman Lesniak stated due process of what – he cannot sell his house because of the three little chickens running around.

Mr. Pirigy stated yes, the opportunity for him to present his opinion on it and that is part of the process.

Mr. Pirigy stated the reason for this meeting is to get input from the community. If he did not get the notice until today, how could he prepare.

Chairman Lesniak stated the notices go out to adjacent property owners.

Mr. Pirigy stated he has a copy of the list, which covers more than 500'.

Mr. Mertzlufft stated the Board accepts letters and emails.

A further discussion was held on a previous application for a special use permit on LakeHill Road which is near Mr. Pirigy's residence and the owner of that house has struggled since then to sell that house and this will not help; he has the right to have his voice heard.

Chairman Lesniak stated whether the person is present or not, the Board reads the letter.

Mr. Prirgyi stated he is not disputing that.

Chairman Lesniak stated and also make it part of the record.

Mr. Prirgyi stated he is not disputing that.

Mr. Pirigy stated he is just trying to help the neighbor because he does not live nearby.

Chairman Lesniak stated if he does not live nearby, these chickens are not going to bother him.

Mr. Pirigy stated Mr. Zipp is a homeowner, pay taxes and trying to sell the house.

Chairman Lesniak stated that he understands that.

Chairman Lesniak stated the rooster complaint was valid, but there is no rooster on the property now.

Mr. Pirigy stated that is where the statement about publically accessible published requirements.

Mr. Pirigy stated Ms. Bradt stated there were four more Special Use Permits in the Hamlet Residential area;

By George, this is not in the Hamlet Residential area;

Long Creek Drive;

VanVorst Drive off of Goode Street;

Jenkins Road;

Mr. Pirigy stated he was surprised that the Special Use Permits were approved.

Mr. Pirigy stated on his way to the ZBA meeting decided to do a drive by on Long Creek Drive and was able to talk to the homeowner. The homeowner was very kind and told Mr. Pirigy about the restrictions he had. The homeowner had no idea before their conversation as to what restrictions were applied and not knowing when those Special Use Permits were issued as to how the information of the requirements are accessible.

Chairman Lesniak stated people have come before the Board requesting horses and various other things and have gotten turned down by the ZBA simply because the areas were not adequate.

Mr. Pirigy stated back two or three days ago when walking down his driveway to get his newspaper, heard the sound of a rooster at the old (Merriam residence) and heard a rooster straight down the road.

Mr. Merchant asked if that was the guy who plays recordings all hours of the night.

Mr. Pirigy stated no, that is the grey house across from Stevens School.

Chairman Lesniak asked Ms. Tofu when he was at her residence.

Ms. Tofu stated last week.

Chairman Lesniak stated that was well after what Mr. Pirigy was saying within the last two days; there was no rooster there only three chickens running around.

Mr. Pirigy stated he believes that Chairman Lesniak feels that he is lying.

Chairman Lesniak stated no, he (Chairman Lesniak) was there.

Chairman Lesniak stated there was a rooster on her property.

Mr. Pirigy asked when.

Chairman Lesniak stated I don't know when, but it wasn't as of last week; you said two three days ago.

Mr. Mertzluft asked the applicant if there is a rooster there now.

Ms. Tofu stated no.

Mr. Mertzluft stated the applicant is on record and what happened in the past is not relevant to this application, only what it is going forward.

Mr. Pirigy stated yes it is.

Mr. Mertzluft stated it isn't.

Mr. Pirigy asked if he could explain why.

Mr. Mertzluft stated yes.

Mr. Pirigy stated the applicant is already violating the zoning code by having the chickens before the applicant got the permit.

Mr. Mertzluft asked what this Board's recourse for having past violation of a code is not relevant and feels it's a good time for the Chairman to go through the four criteria for a Special Use Permit based on the here and now.

Mr. Pirigy stated he stands by his first two statements and you do not have to agree.

Mr. Mertzluft stated this is not a law enforcement Board; we do not lie down, do not enforce the law, we grant variances for zoning and for Special Use Permits.

Mr. Pirigy stated then you allow for forgiveness versus permission.

Mr. Mertzlufft stated he is not in a position to offer either, it is not relevant. Mr. Mertzlufft stated you feel like you are aggrieved and that is fine. There are recourses out there for you; this Board is not it.

Mr. Pirigyi asked if the zoning code is law.

Mr. Mertzlufft stated of course it is.

Mr. Pirigyi stated you are exercising law.

Chairman Lesniak stated if the Board turned down everybody that violated something that was in front of the Board, we (the Board) would not pass any of them; a lot of people don't know what is going on.

Mr. Pirigyi stated that is not an excuse.

Chairman Lesniak stated Ms. Dingman Secretary, has Mr. Pirigyi's written statement and will be in the record.

**Rod Begin, 2A Townley Drive** stated when he received the notice in the mail the first concern was if there was going to be a rooster; there is no rooster. The three hens are so quiet you don't even know they are there – you don't hear a thing. We have no problem with having these three hens to teach inner city children. Mr. Begin stated he was in the military for 30 years and knows all about rules and regulations and what you have to consider, but in this particular case as others he has dealt with in the military, this is a common sense decision; three hens are not a problem.

**Christine Heffernan, 4 Townley Drive** stated Mr. Tofu is extraordinary and what she does as a teacher for her kids. Ms. Heffernan stated Mr. Tofu's home is cleaner than my home; she cleans it, not just the grass, but anywhere on her property and picks up after the hens. Ms. Heffernan said Mr. Tofu does not raise the hens for meat or raise the eggs to sell or has not seen an egg yet. There are no any roosters and when she had the rooster; it was not a problem, but a little annoying to the neighbors and made arrangements to find the rooster a home. It's a hobby and no different than having a Macaw. How far does the law go; what is considered poultry, what is considered an animal, as Mr. Begin said use common sense, also knows there are rules and regulations and feels Ms. Tofu has met every one.

Chairman Lesniak stated people have dogs that make a lot of noise and cannot believe that these chickens cause this much discussion; past applications did not have this much discussion.

Chairman Lesniak closed the public hearing at 8:35 p.m.

Ms. Bell asked if the chickens could get out from the existing 6' stockade fence (includes crawling under the fence digging up worms and cause damage), the coop or the enclosed back yard on the property.

Ms. Tofu stated no, the chicken don't fly, they hop.

Chairman Lesniak attested to that.

Ms. Bell read the four criteria for a special use permit:

1) The use shall be of such location, size and character that it will be in harmony with the appropriate and orderly development of the district in which it is situated and will not be detrimental to the orderly development of the adjacent districts. ). The applicant's response – "The use of three hens in the backyard of my home will be in harmony with my neighborhood and will not be detrimental to the orderly development of adjacent districts. I have 17 years of farming experience and maintain a pristine chicken habitat. The small hobby coop is situated under a pine tree in my back yard. My back yard perimeter has a 6 foot stockade fence. Nothing is visible to any adjacent properties." The Board concurs.

2) The location and size of the use, the nature and intensity of the operation involved or conducted in connection therewith, its site layout, and its relation to streets giving access to which shall be of such that traffic to and from the use and the assembly of persons in connection with it will not be hazardous or inconvenient to the neighborhood or conflict with the normal traffic of the neighborhood. The applicant's response – "The location of the chicken coop has no impact on traffic in the neighborhood." Ms. Bell stated the applicant has indicated they are not going to be selling eggs, no customer access to it, there is three hens and there is no commercial infrastructure.

3) The location and height of buildings, the location, nature and height of walls and fences, and that the use will not hinder or discourage the proper development and use of adjacent land and buildings or impair the value thereof. The applicant's response "The chicken coop is located in the back yard. The size of the light grey and white coop is 69" by 33" by 46' (LxWxH). The coop is surrounded by a small wire fence. My back yard perimeter has a 6 foot wooden stockade fence. Nothing is visible to any adjacent properties." Ms. Bell stated when driving by did not detect anything, but that is why Ms. Bell was pursuing anything that potentially from getting under the fence or a possibility of any impediment there. The existing 6' stockade fence is in line with the neighborhood with a residential hamlet type surrounding and suspects it was up before the chickens.

4) The public convenience and welfare will be substantially served and appropriate use of neighboring property will not be substantially or permanently injured, subject to appropriate conditions and

safeguards as determined necessary to promote the public health, safety and welfare. The applicant's response – "I take great pride in the ownership and responsibility of animals. The appropriate use and care of my chickens will not cause injury or harm to the public health, safety and welfare."

Chairman Lensiak stated the applicant meets all four criteria.

Mr. Russell agrees.

Mr. Fischer stated that public comment is over and Ms. Tofu has a fantastic house and my only purpose in being here tonight was to bring up the fact that Mr. Reilly, Esq. should look at this application from a standpoint of law and we are located in the Hamlet Residential District and have those regulations. Mr. Fischer asked the Board to have Mr. Reilly, Esq. to look at the application.

Mr. Russell asked Chairman Lesniak if the public discussion closed.

Mr. Fischer stated his reaction is not against Mr. Tofu who has an impeccable place.

Chairman Lesniak appreciates the comments.

**MOTION:** Ms. Bell motioned to name The Zoning Board of Appeals the Lead Agency in the SEQR process. Mr. Russell seconded the motion and all present voted in favor. **CARRIED.**

**MOTION:** Ms. Bell motioned to declare this an **Unlisted Action** under the SEQR process therefore will declare this a Negative Declaration under the SEQR process. Mr. Russell seconded the motion and all present voted in favor. **CARRIED.**

**MOTION:** Ms. Bell made a motion for 2 Townley Drive pursuant to §138-8 to allow three (3) hens at the property with the following stipulations and provisions that all of the chicken feed of any other food be contained inside on the premises properly stored, there be a maximum of three (3) hens, no roosters, the hens remain in the fenced in yard and the chicken manure be composted, thrown out or maintained so that there will be no noticeable odor emanating from chicken or the property. Mr. Russell seconded the motion and all present voted in favor.

**CARRIED.**

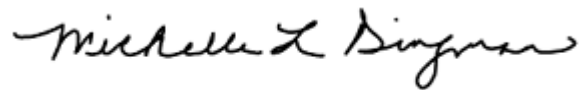
**Mr. Pirigyi** stated he could not find this second of code (§138.8.2.26.3). Ms. Bradt, Building Department stated this is a typo.

Ms. Bell stated it should be §138-8.

**MOTION:** Mr. Russell made a motion to adjourn. Ms. Kane seconded the motion and all present voted in favor. **CARRIED.**

Meeting adjourned at 9:25 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Michelle L. Dingman". The signature is written in a cursive, flowing style.

Michelle L Dingman  
Zoning Board of Appeals Secretary

Attachment