



Mr. Northrup feels that since a very gracious variance was granted back in 2006, by granting this proposed variance after the house has already been built, other people could make the same mistake.

Mr. Bush said that he does not care what it costs him to correct this mistake he will pay a fine or purchase that extra property.

Mr. Lesniak asked if this should be considered a corner lot.

Mr. Johnson said that portion of Martin Avenue is a paper street and the town does not plow it.

Mr. Reilly said contrary to the zoning ordinance and how it should be treated, however it also is distinguishable from a normal town street a distinction can be made between this type of a paper street and a normal thoroughfare.

Mr. Lesniak asked the applicant why he did not apply to the Zoning Board before he built the house.

Mr. Bush said that he moved the house up front and figured he would come back and get that variance. Mr. Bush said it was in the middle of the wintertime, his house has sold, and everything was in storage and had to get the foundation in. Mr. Bush said that he did not know that this was a corner lot.

Ms. Bell asked the applicant if he knew that when he started digging the foundation that he was not 60ft. from the front. Mr. Bush said the measurement is from the concrete pad in front; not the house itself.

Mr. Johnson said the present survey map shows more lot area than the prior map.

Ms. Bell asked the possibility of the applicant pursuing purchasing a portion of the dirt road of where Martin Avenue extends from the town.

Mr. Lesniak asked if the town pushes snow there. Mr. Bush replied no.

Mr. Lesniak asked how much land does the town own. Mr. Johnson said he did not know at this time.

Mr. Lesniak said should we treat this as a side yard setback; is it a corner lot.

Mr. Reilly said legally is it a corner lot or is it a paper street; however this Board can certainly distinguish from a street used exactly for ingress or egress; a paper street is distinguishable from a street that is used for ingress and egress.

Mr. Lesniak said in the future that may be used and would make that a corner lot. Mr. Reilly said you may want more information on the overall status of Martin Avenue as far as the town's perspective; will it ever be used, could it ever be used, or does the town want to sell it.



A further discussion was held on the Martin Avenue property.

Mr. VanDeCarr asked if the two setbacks are with respect to Top Avenue and Martin Avenue and not with regard to the property owners surrounding the property; with respect to the setbacks would satisfy all the neighbors. Mr. Bush said that the neighbors are fine.

Mr. VanDeCarr asked the width of Top Avenue. Mr. Johnson said a 40 or 50ft. right-of-way.

Mr. VanDeCarr asked what is across the street from Top Avenue. Mr. Bush said a garage and Dunkin Donuts.

A discussion was held on the applicant purchasing a portion of the property to the west.

Mr. Rogner asked Mr. Reilly about not considering this as a corner lot. Mr. Reilly said no it has to be a corner lot, but I think you can based on facts distinguish this between a paper street and a normal street although all of the variances needed is a balancing of interest.

Mr. Rogner asked the applicant about pursuing additional land.

Mr. Bush is in agreement. Mr. Rogner asked if the house is completely finished. Mr. Bush he is finishing the siding.

Mr. Bush said that he made a mistake with the front yard setback, but as far as the characteristic of the neighborhood, is within the rest of the homes in the neighborhood.

Mr. Lesniak asked what issues would there be for the applicant if the Board asked for a 60ft. setback. Mr. Bush said his main concern would be the septic in the back.

Mr. Reilly said there are no houses to the west of this property.

Mr. Lesniak said the Board could table the application so the applicant could purchase additional land from the town.

Ms. Bell suggested approaching the town or decommissions as a paper street and sells to the applicant.

Mr. Lesniak opened the public hearing at 8:05pm

Travis Bradley asked the Board to explain a variance.

Mr. Lesniak explained the area variance to Mr. Bradley.

Mr. Lesniak closed the public hearing 8:07pm

Mr. Rogner went the five criteria of 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. Mr. Bush replied 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. Mr. Bush replied no.
- 3) Whether the requested area variance is substantial. Mr. Bush replied no, but Mr. Lesniak felt the variance was substantial.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood of district. Mr. Bush replied 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. Mr. Bush replied yes.

Mr. VanDeCarr said based on this rendering, dated August 13, 2008, and asked the applicant when he became aware of the setback issues. Mr. Bush said completely aware on this day.

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

MOTION: Mr. Rogner motioned to declare this a Type II action under SEQR and therefore exempt from review. Ms. Bell seconded the motion all present voted in favor. **CARRIED.**

MOTION: Mr. VanDeCarr said based on fact that it is a corner lot and the circumstance that being a paper street and based on the fact fewer setbacks and the neighbors with the regulations in the town would like to grant the variance as stipulated in the application.

Mr. VanDeCarr would move that the front setback variance of 5.6ft. be granted to Top Ave as noted on the rendering as provided on the application and grant a variance of 3.3ft. from Martin Avenue as depicted on the map provided by the applicant, dated August 13, 2008. Ms. Bell said an additional 3.3ft. which brings it to a total of 46.3ft.. Mr. Rogner added this is for 27 Martin Avenue pursuant to section 138-8.1. Ms. Kane seconded the motion.

Mr. Rogner said unique circumstances voted in favor.

Ms. Kane voted in favor said that it fits into the neighborhood.

Ms. Brown said that it fits into the neighborhood and voted in favor.

Mr. VanDeCarr voted in favor.

Mr. Northrup voted in favor.

Ms. Bell said that she is not thrilled that the Board is adding an additional 3.3ft; not making a 46ft. front setback on the second property line bringing in the unique corner lot voted in favor.



Mr. Lesniak said it is a unique situation and feels that the existing homes are infringing on the setbacks more than the applicants voted in favor. **CARRIED.**

Charles Rao, 17 Jenkins Road for a special use permit pursuant to section 138-8. Mr. Lesniak said the applicant is requesting a special use permit for custody of two chickens for a 4-H project for the applicant's daughter which is allowable in a Hamlet-Residential District with a special use permit.

Mr. Rao said he has had the two chickens for one year for his daughter's 4-H project to show at the fair.

Mr. Lesniak asked about other animals. Mr. Rao replied three rabbits; special use permits are not needed for rabbits.

Mr. Rogner asked the applicant if he plans on having more than two chickens. Mr. Rao's replied no. Mr. Rogner asked about Roosters. Mr. Rao said no.

Ms. Bell asked where the chickens are housed. Mr. Rao replied outside.

Ms. Bell asked what is being done with the manure. Mr. Rao said that shavings are used and the manure is used for their garden.

Ms. Bell asked if there is any other potential for chickens to be housed in a more rural farm atmosphere. Mr. Rao said this is the only place that they have to house the chickens; they presently board their horses at another location.

Mr. Lesniak referenced a letter dated, April 3, 2009 from the Building Inspector which states:

**Mr. Charles C. Rao
17 Jenkins Rd.
Burnt Hills, NY 12027**

Subject: Custody of farm animals, 17 Jenkins Rd.

Dear Mr. Rao:

It has come to the attention of the Building Department that chickens are being kept at the above referenced address, located in the Hamlet Residential District of the Town of Ballston.

Please be advised, the custody of farm animals in the Hamlet Residential District requires a Special Use Permit, granted by the Town Zoning Board of Appeals. If you desire to maintain the custody of the chickens or other farm animals you must apply for and receive said Special Use Permit.

It was also noted that bags of rubbish are located outside the dwelling on the property. As per Section 73-6, Code of the Town of Ballston, every occupant of a dwelling is required to dispose of rubbish in a clean, sanitary and safe manner.



Mr. Lesniak also went on the reference a March 31, 2009 letter stating "the situation over the winter has gotten worse the house still looks abandoned there is now trash on the front porch and can smell from the road as you walk by. I informed you in the fall about the cats in the house when I walked by the other day those cats are still in window not looking healthy all matted and very thin. These animals are in danger and the house is an eyesore. You fix up Jenkins Park and there is a nice neighborhood with abandoned house with animals. I hope someone from the town investigates the situation."

Mr. Rao said that letter was written by his ex-wife.

Mr. Lesniak said the Board is addressing the chickens

Ms. Brown asked if there have been any problems with the chickens attracting wild animals. Mr. Rao replied no. Mr. Rao said if he has never seen a fox or other wild animals except for the neighbor's dogs that have to be chased away.

Mr. Rogner asked Mr. Rao if he is currently living at that current address. Mr. Rao replied yes, but currently has been remodeling the house and has temporarily moved out.

Ms. Brown asked who is taking care of the chickens. Mr. Rao said he and his children. Mr. Rao said that they are staying not even a mile away from the property.

Mr. Lesniak said that six letters were received from neighbors. Michelle Dingman, Secretary handed copies to Mr. Rao.

Mr. Neumann, 36 Woodside Drive rejects the land variance at 17 Jenkins Road for raising chickens who are concerned about the noise, smell, and the trash in the road as the wild dogs, coyote, and any other wild animals. Mr. Neumann went on to say this is a neighborhood not farmland.

Mr. Hughes, 40 Woodside Drive has reservations about using a residential area to raise a few chickens. I would be concerned on two accounts the first is whether or not a rooster would be involved and the noise factor this would introduce into what has been a very quite and tranquil neighborhood.

Mr. Rao said that the Hughes' have a dog that is constantly barking day and night and the Billings next door have a small dog that yaps all night long; chickens you cannot hear, but the dogs you can.

Mr. Hughes went on to say the second concern is whether there is adequate space to properly house and manage such an enterprise given the relatively small lot sizes occupied by this particular house.

Ms. Hughes, 40 Woodside Drive is against issuing a license to raise chickens to owners to the home on Jenkins Road across from the Park. I feel the lot size is too small and that it would be disruptive to the neighbors.



Ms. Oppenlander, 39 Woodside Drive objects to the request for the variance and the presence of chickens at this location for the following reasons:

Coyotes and foxes inhabit Jenkins Park. The presence of chickens in such proximity will likely attract coyotes, foxes into the neighborhood. This is a safety concern for the residents and their pets. I was aware of a rooster that lived there for a period of time; crowed night and day and disturbed my sleep. I am concerned about the presence of pathogens in their feces, runoff into my lawn, and the presence of parasites on the chicken's bodies. The presence of livestock in the residential area will decrease the property values and desirability of houses in this neighborhood and hence the resale potential. Finally, I am concerned about the presence of livestock on property where the home does not appear to be inhabited.

Ms. Hainey-Flacke, 38 Woodside Drive said that this property is clearly visible from her front door and the noise from his home is carried directly into my front windows when they are open in the warmer weather. In the past Mr. Rao has had chickens which disturb the sleep of residents and his rooster crowed (Mr. Lesniak said is not relevant) often causing the dogs in the neighborhood to bark. Mr. Rao did nothing to combat this problem (Mr. Lesniak said he disagrees because he got rid of them) additionally, Mr. Rao ignored zoning rules and had little thought of the impact in the neighborhood in which the house is located. I am not opposed to a reasonable 4H project, however I am opposed to numerous chickens or any other animals being kept in a residential neighborhood when the property lists on the request currently appears vacant. Further presence of chickens has the potential to attract coy dogs, coyotes, and foxes in the neighborhood with many children are also of concern. There are also issues related to storage of grain attracting larger rodents and the cleanliness and smell of the area. Given these concerns, I respectfully ask that the permit not be granted.

Ms. Billing, 19 Jenkins Road said my children in the past have taken part in the education value of the chickens from their hatching to collecting the eggs. Since September Charlie and his daughters have been residing at Charlies parents house on Peaceable Street and feel if Charlie would like to keep the chickens for his daughter should move to where he resides on Peaceable Street. My concern with the chickens is the care of them. Two weeks ago when it was warm there was an odor that you could smell from my deck. The chickens are on the border of the two properties. I am concerned with the wildlife that chickens are going to attract with little upkeep. In the past when Charlie has lived in the residence, he has not taken proper care of the chickens. There was a time when they were attacked by a wild animal, a few passed and others injured. The chickens have also have had a lack of water in the summer when he was living there. I am concerned with him living most of the time at his parents these situations are gong to get worse. I have animals and young children and do not want the wildlife attracted closer to my house. I should be able to sit on my deck and not smell farm animals on a hot day in the suburbs. I hope all of this will be taken into consideration regarding the chickens residing at 17

Jenkins Road. For years the chickens have lived there without a single complaint from me. At this time, with no one using this property as a primary residence I do have a lot of opposition to the chickens staying.



Mr. Rao said that Ms. Billings is a very good friend of his ex-wife and her dog is the primary concern of the whole neighborhood who yaps all night long and so does Ms. Flacke's dog who barks all night long; the chickens do not cause their dogs to bark and bother the entire neighborhood.

Mr. Lensiak said he was over to the residence and there was a barking dog; dogs will bark. Mr. Rao said that the Billings let their two dogs out at midnight and constantly bark all night long.

Mr. Lesniak has a concern whether someone is living at the residence up to this point. Mr. Rao said that he goes there everyday and presently is working on the residence and cannot be living while this is being done.

Mr. Reilly asked Mr. Rao the time frame to move back into the property. Mr. Rao said before the end of the summer.

Mr. Lesniak opened the public hearing at 8:32pm

Mr. Lesniak closed the public hearing at 8:33pm

No one wished to speak.

Ms. Kane asked what are the chickens kept in. Mr. Rao said a chicken coop. Ms. Kane asked as Ms. Bell "how much chicken poop do chickens make." Ms. Bell said two chickens not all that much.

Mr. Rao said that you cannot smell it. Mr. Rao said that pine shavings are kept down for the chickens and cannot smell anything in the summer, but can smell the dogs.

Mr. Rao said the pine shavings are changed once a week and placed into the garden. Mr. Rao said that the neighbors do not like the garden.

Ms. Kane asked if any of chickens have been attacked by wild animals. Mr. Rao replied no. Ms. Kane asked if Mr. Rao has even seen wild animals in the yard. Mr. Rao replied never.

Ms. Brown asked Mr. Rao how his daughter got involved with taking care of chickens. Mr. Rao said she had a project to hatch the eggs and then she kept the chickens because she wanted show them at the fair. Ms. Brown asked how long your daughter will be involved in 4H. Mr. Rao said his daughter is presently 12 years old and will be involved until she is 19 years old.

Mr. Northrup asked if there been an opportunity to move the chickens to another location to still continue the 4H project. Mr. Rao said no. Mr. Northrup said there may be a farmer in favor of supporting the 4H program in the area that may house that chicken coop in which your daughter could still participate in the 4H project. Mr. Rao said he would rather keep the chickens at his house.

A further discussion was held on chicken manure disposal.

Mr. Northrup said that he did not smell the chickens when he was at the residence.



Mr. VanDeCarr asked if the chicken coop was portable. Mr. Rao said it was in the ground. Mr. VanDeCarr asked the dimensions. Mr. Rao said 10'x'10'x5'. Mr. VanDeCarr said it would be possible to move. Mr. Rao replied yes, but would prefer to keep it as his residence.

Ms. Bell went through the four criteria of 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. Mr. Rao replied yes

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. Mr. Rao replied no.

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. Mr. Rao replied no.

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. Mr. Rao replied no.

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

Mr. Lesniak said after answering page two of the EAF the only findings were minor chicken manure.

MOTION: Ms. Bell motioned to declare this a Type II action under SEQR and therefore exempt from review. Ms. Rogner seconded the motion. Mr. Rogner voted in favor, Ms. Kane voted in favor, Ms. Brown voted against (proximity of the neighbors), Mr. VanDeCarr voted in favor, Mr. Northrup voted in against, Ms. Bell voted in favor, and Mr. Lesniak voted in favor. **CARRIED.**

MOTION: Mr. VanDeCarr move for granting a special use permit to Mr. Rao located on 17 Jenkins Road requesting the following stipulations to for the purposes of a 4H project:

- Only two chickens
- No roosters
- Appropriate cleaning and/or maintenance of the coop
- Service or visitation at least twice a day
- The applicant is residing at 17 Jenkins Road by end of 2009

Mr. Rogner asked about a stipulation date of eight years.



Lesniak asked Ms. Bell how long a chicken lives. Ms. Bell said the longest was four and a half to five years.

Mr. Rogner said if a termination date is not put on this, chickens will be allowed for the next 100 years. Mr. Lesniak said two chickens. Mr. Rao asked what will be wrong with that. Mr. VanDeCarr said he feels it is a bad thing because it is a more residential neighborhood than it is a country neighborhood.

Mr. Lesniak said if the special use permit lapses for two years then you would not have the right to have the chickens.

A further discussion was held on chicken manure disposal.

Mr. VanDeCarr said the stipulations are as follows:

1. Only two chickens at all times.
2. No roosters.
3. Servicing on the chickens twice a day at a minimum.
4. Eight years duration on the special use permit.
5. Maintenance and cleaning of the coop which should include pine shavings around the appropriate masking agents smell.
6. It will be the responsibility of the applicant to take care of waste in an appropriate way.
7. The occupant will return to full residence at 17 Jenkins Road residence by end of calendar 2009.

Ms. Kane seconded the motion.

Mr. Rao asked to extend the motion to ten years. Mr. VanDeCarr said the motion is for eight years. Mr. Rogner is fine with ten years. Mr. VanDeCarr said that he is fine with ten years or when the chickens die which ever comes first.

Mr. Rao said what if the chickens are still alive after eight years.

Mr. Reilly said the legal answer is request to extend the special use permit after the eight years.

Mr. Lesniak said for this special use permit for two chickens and all the stipulations for eight years.

Mr. Rogner said he appreciates what the neighbors have to say unfortunately most of what they have to say is probably not valid with regard to the space voted in favor.

Ms. Kane voted in favor.

Ms. Brown voted against due to the proximity of the neighbors.

Mr. VanDeCarr voted in favor.



Mr. Northrup voted against based on the fact that you currently stated that you had horses boarded off site and the possibility of checking with area farmers to see if they could house the chickens.

Mr. Lesniak voted in favor because it allowed in the Hamlet Residential District and has more than cooperated and feels that he is checking on the chickens twice a day does not feel there is a difference much than going to work and coming home. **CARRIED.**

MOTION: Ms. Kane made a motion to adjourn. Mr. Rogner seconded the motion.
CARRIED.

Meeting was adjourned at 9:20pm.

Respectfully submitted,

Michelle L. Dingman