

MINUTES

**Town of Wappinger
Zoning Board of Appeals
August 25, 2020
Time: 7:00 PM**

**Town Hall
20 Middlebush Road
Wappinger Falls, NY**

Summarized Minutes

Members:

Mr. Galotti	Chairman	Present
Mr. DellaCorte	Vice-Chair	Present
Mr. Barr	Member	Absent
Mr. Lorenzini	Member	Present
Mr. Shah	Member	Present

Others Present:

Ms. Cobb	Zoning Board of Appeals Attorney
Mrs. Roberti	Zoning Administrator
Mrs. Ogunti	Secretary

SUMMARY

Discussion:

Scott & Amanda Rider

Variance denied

Video of the August 25, 2020 Zoning Board of Appeals Meeting:

<https://www.youtube.com/watch?v=bxtHG6ESzM>

Mr. DellaCorte: **Motion to accept the Minutes from August 11, 2020 meeting.**

Mr. Shah: Second the Motion.

Vote: All present voted Aye.

Discussion:

Appeal No: 20-7704 (Variance)

Scott & Amanda Rider: To vote on a decision on an area variance Section 240-37 of District Regulations in an R15 Zoning District.

-Where a minimum of **2 acres** is required per large farm animal or multiple small animals in a residential district, the applicant can only provide **0.40 acres**, thus **requesting a variance of 1.60 acres to allow chickens.**

The property is located at **5 Orchard Drive** and is identified as **Tax Grid No. 6257-03-285455** in the Town of Wappinger.

Mr. Galotti: **Motion to deny the applicants the variance.**

Mr. Lorenzini: Second the Motion.

Roll Call Vote:	Mr. Lorenzini	YES
	Mr. DellaCorte	YES
	Mr. Shah	YES
	Mr. Galotti	YES

SEE DECISION BELOW:

Town of Wappinger

20 Middlebush Road
Wappingers Falls, NY 12590

845-297-6256 Phone
845-297-0579 Fax

Town of Wappinger Zoning Board of Appeals

In the Matter of 5 Orchard Drive (Scott and Amanda Rider) Area Variance Application

Whereas, the Town of Wappinger Zoning Board of Appeals (hereinafter "ZBA" or "Board") has received an application from Scott and Amanda Rider for an area variance involving property located at 5 Orchard Drive, tax grid number 6257-03-285455-0000, for relief from §240-37 of the Town Code which, together with the Town's Schedule of Use Regulations, sets forth the space required for permitted uses, to permit the establishment of a permitted accessory use, the keeping of chickens on a lot of .4 acres where a minimum of 2 acres is required, necessitating a variance of 1.6 acres; and

Whereas, the property is located in the Residence, Single-Family 15,000 Square Foot (R-15) Zoning District; and

Whereas, chickens are included in the definition of "farm animal" in Town Code §240-5, but are not included in the definition of "farm animal, large;" and

Whereas, the Schedule of Use Regulations for Residential Districts in the Town provides as follows: "Except with respect to agricultural operations as defined by the New York State Agriculture and Markets Law, the keeping of horses and/or farm animals, properly, restrained, for the use of residents and their guests, provided that not less than two acres of land is available for the first farm animal and an additional two acres is available for each additional large farm animal, except that the offspring of an animal may be kept with its mother for a period not to exceed one year; all animal feed is stored in rodent-proof containers; and no storage of manure shall be within 150 feet of a street, property line, watercourse or wetlands area;" and

Whereas, the granting of the area variance is a Type II action under the State Environmental Quality Review Act (SEQRA) regulations; and

Whereas, after due and proper notice, a public hearing was held on this matter on July 14, 2020 and continued on August 25, 2020, during which time all who wished to speak were heard; and

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Whereas, a motion was made and seconded to deny the variance requested; and

Whereas, after due deliberation, including careful consideration of the standard of review for an area variance, namely *"the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant,"* the ZBA has determined that the criteria for issuance of an area variance have not been met; and

Whereas, the ZBA observes that, other than the requirements set forth above, the Town lacks regulations concerning the keeping of chickens generally, such as guidance concerning the proper care of the chickens, including making sure that they have access to food and fresh water, sufficient structures for their protection from the elements and from predators, sufficient space within the enclosure and within the yard per chicken (and corresponding limits on the number of chickens allowed on any given lot), a prohibition on the keeping of roosters in residential neighborhoods, requirements for the periodic cleaning and maintenance of the chicken coops/enclosures including the timely removal of waste from the residential property to avoid odors, requirements that the chickens not be permitted to leave the owner's property, etc.; and

Whereas, while it is within the ZBA's jurisdiction to impose certain conditions on the issuance of a variance, with respect to this variance, the Board finds that the myriad of conditions that would need to be imposed prior to permitting chickens to be housed on a residential lot of significantly less than two acres is not only well beyond its expertise but also is more appropriately left to a legislative determination by the Town Board, particularly since other residents of the Town may seek similar variances; and

Whereas, corresponding to the lack of regulation of chickens, the Town also lacks regulation for the enforcement of any requirements for the keeping of chickens; and

Whereas, while the ZBA acknowledges that these applicants appear knowledgeable on the subject of the keeping of chickens and trusts that they would ensure the safe and humane treatment of the chickens in their care, the Board also is concerned with the precedent that would be set in the Town by permitting chickens on a lot of only .4 of an acre, particularly since the ZBA may consider only the use and not the user; and

Whereas, more specifically, the ZBA finds as follows:

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A) 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:

After review of the facts and testimony, as well as the Board's observation of site conditions, the Board finds as follows:

By drafting the requirements that exist presently in the Town Code, the Town Board expressed an intent that agricultural uses, including the harboring of farm animals such as chickens, be permitted only on lots of at least two acres and not in residential neighborhoods comprised of smaller lots. No lots in the vicinity of the applicant's lot are used for the harboring of chickens or other farm animals. The establishment of this use in this neighborhood would be out of character with the neighborhood. In addition, in the absence of comprehensive Code provisions ensuring the humane and safe maintenance of chickens on a lot, and regulations concerning the permitted number of chickens, and the cleaning and maintenance of the coops, and prohibitions on the keeping of roosters, it cannot be said that the housing of chickens on a .4 acre lot would not be a detriment to nearby properties.

B) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance:

After review of the facts and testimony, as well as the Board's observation of site conditions, the Board finds as follows:

The benefit sought by the applicant, the keeping of chickens on their .4-acre property cannot be achieved by any method other than a variance.

C) Whether the requested area variance is substantial:

After review of the facts and testimony, as well as the Board's observation of site conditions, the Board finds as follows:

The requested variance, 80% of the Code requirement, is substantial.

D) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

After review of the facts and testimony, as well as the Board's observation of site conditions, the Board finds as follows:

In the absence of comprehensive regulations concerning the location, size, and cleaning requirements for the enclosure, limits on the number of chickens and prohibitions on the keeping of roosters, the granting of the variance is likely to have an adverse effect on the physical or environmental conditions of the neighborhood, including potential odors, noise, vermin and predators.

E) 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.

After review of the facts and testimony, as well as the Board's observation of site conditions, the Board finds as follows:

The difficulty is self-created in that the applicant wishes to commence an accessory use on a lot that does not meet the dimensional requirements for such use.

Now Therefore Be It Resolved, the ZBA hereby denies the area variance requested by Scott and Amanda Rider for an area variance involving property located at 5 Orchard Drive, tax grid number 6257-03-285455-0000, for relief from §240-37 of the Town Code which, together with the Town's Schedule of Use Regulations, sets forth the space required for permitted uses, to permit the establishment of a permitted accessory use, the keeping of chickens on a lot of .4 acres where a minimum of 2 acres is required.

Motion: Peter Galotti Second: John Lorenzini

Peter Galotti, Chair	<u>Aye</u>
Thomas DellaCorte, Vice Chair	<u>Aye</u>
David Barr	<u>Absent</u>
John Lorenzini	<u>Aye</u>
Shailesh Shah	<u>Aye</u>

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The foregoing resolution was duly adopted by the vote of a majority of the members of the Town of Wappinger Zoning Board of Appeals at a regular meeting held on August 25, 2020.

By: Beatrice Ogunti
Beatrice Ogunti, Secretary
Town of Wappinger Zoning Board of Appeals

Mr. Lorenzini:
Mr. Shah:
Vote:

Motion to adjourn.
Second the Motion.
All present voted Aye.

Respectfully Submitted,

Adjourned: 7:19 pm

Bea Ogunti
Secretary
Zoning Board of Appeals