

Patrick Harfouche of Kloc's Grove stated their request is to seek a continuance of the variance for live music on Wednesdays from 6 P.M. – 9 P.M.

Chairperson Hicks stated a 6-month variance was previously granted. Code Enforcement Officer Busse stated no complaints have been received by the Code Enforcement Department or the Police Department.

No public comments were received.

No comments were received by Zoning Board Members.

Chairperson Hicks consulted with Deputy Town Attorney Stachowski to dispense with the balancing test as it was previously done. Mr. Stachowski advised that the Zoning Board can adopt their previous reasoning and indicate the time frame for the extension. Ms. Greenan questioned Mr. Farouche if the intent is to continue with live music through the winter months or resume in the spring. Mr. Farouche stated the intention is to resume in the spring but would like the option to remain open. Chairperson Hicks questioned if the applicant is considering offering live music indoors and outdoors. Mr. Farouche confirmed this.

Chairperson Hicks stated the applicant provided the Zoning Board with financial information reflecting additional income from the live music, there have been no complaints, and concluded the Zoning Board can adopt the previous use variance. Chairperson Hicks questioned if the length of the use variance should be 6 months or 1 year. Ms. Greenan stated she preferred 6 months. Mr. Bedient stated he would support a 1-year variance noting the difficulty with planning spring and summer events. Ms. Greenan agreed with Mr. Bedient's comments and would support 1 year.

Motion by Hicks, seconded by Bedient, to grant the request of Diana Harfouche for property located at 1245 Seneca Creek Road for a variance to allow live music on property Wednesdays from 6 P.M. – 9 P.M. through October 2025 based on the previous use variance balancing test with the applicant returning to the Zoning Board of Appeals in October 2025.

Ayes: All

Noes: None

Motion Carried

2024-49

Request of Robert Ballard for property located at 76 Tudor Boulevard to allow a variance for the construction of an addition to existing dwelling of a 5' setback (accessory structures shall be 10' from dwelling).

Robert Ballard stated he would like to make the entrance to his house which are in disrepair safer for himself and his wife by enclosing the stairs. Mr. Busse stated the 10' separation is a fire safety requirement but noted the garage is block wall and is a significant fire separation and does not object to the request.

No public comments were received.

Chairperson Hicks stated neighbor signatures with no objection to the variance were received from residents at 79, 72, 86, and 87 Tudor Boulevard, and 265 Densmore Avenue.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, there are neighbor letters in support; 2) Is there an alternative – no; 3) Is the request substantial – no, falls within town code; 4) Does the variance have an impact on the environment – no, there

is no impact on the environment; 5) Is this a self-created difficulty – no, the conditions existed when the house was purchased.

Motion by Greenan, seconded by Lang, to close the public hearing and grant a variance for property located at 76 Tudor Boulevard to allow a variance for the construction of an addition to existing dwelling of a 5' setback.

Ayes: All

Noes: None

Motion Carried

2024-51

Request of Logan Bruckman for property located at 4343 Clinton Street to allow a variance for the construction of an addition to existing dwelling of 35' front setback (front setback maximum 40').

Motion made by Hicks, seconded by Greenan, to table this until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS:

2024-55

Request of Spenser Austin for property located at 160 Phyllis Drive to allow a variance to erect a 6' fence in front/side yard (maximum 4' height allowed in front yard).

Spenser Austin stated he would like to replace the existing chain-link fence, which is in disrepair, with a 6' fence for the safety and security of his two large dogs.

Chairperson Hicks questioned if the fence will be 3' from the sidewalk. Mr. Spense confirmed this.

Chairperson Hicks stated neighbor signatures with no objection to the variance were received from residents at 239, 240, 251, 257, 260, and 263 Mill Road and noted the property owners of 245 Mill Road refused to sign. Mr. Austin stated he was unable to make contact with the owners. Chairperson Hicks questioned the owners of 154 Phyllis Drive. Mr. Busse stated the member of the Code Enforcement Office taking the application did not mark 154 Phyllis Drive on the map provided to Mr. Austin. Mr. Stachowski stated the notice requirement was met and the Zoning Board members can proceed.

Chairperson Hicks stated the applicant is only requesting one variance, not three as Mr. Austin indicated in his letter. Mr. Busse agreed with this statement.

No public comments were received.

Ms. Greenan referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, there are neighbor letters in support; 2) Is there an alternative – yes, one alternative to the variance is to build a 4' fence but noted the potential safety risk to pedestrians or children of the two large dogs; 3) Is the request substantial – no, the height is not substantial and moving the fence inward is an advantage; 4) Does the variance have an impact on the environment – no, there is no impact on the environment; 5) Is this a self-created difficulty – yes, but this is not the determining factor.

Motion by Bedient, seconded by Lang, to close the public hearing and grant a variance for property located at 160 Phyllis Drive to allow a variance to erect a 6' fence in front/side yard.

Ayes: All

Noes: None

Motion Carried

2024-56

Request of Denise Watroba for property located at 3744 Clinton Street to erect a garage (24 x 40) with a 13' 6" midspan (maximum 12' height allowed).

Denise Watroba stated she is requesting to replace the existing garage and the midspan needs to be higher because the pitch of the front is changing to go away from the driveway. Ms. Greenan requested clarification on the direction of the water. Ms. Watroba stated it will go sideways instead of moving forward toward the driveway. Ms. Greenan questioned if this will cause problems for the neighbors. Ms. Watroba stated she will install gutters and noted the current situation causes more problems. Mr. Busse confirmed the water will be pitched away from the driveway and neighbor's property line. Chairperson Hicks questioned if the driveway was icy during the winter. Ms. Watroba confirmed this and changing the pitch will benefit her back neighbor, also.

Chairperson Hicks stated neighbor signatures with no objection to the variance were received from residents at 3736 and 3760 Clinton Street, and 23 Maplewood Avenue.

Jacqueline Balikowski, 62 Highland Avenue, questioned if the ZR-1 was submitted to Erie County and on what date. Town Clerk Newton confirmed this was submitted but does not have the date on hand and would provide it to the Chair. Ms. Balikowski questioned why the form was not posted on the website.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, there are neighbor letters in support and will produce a desirable change; 2) Is there an alternative - no, the existing garage is not functioning well; 3) Is the request substantial - no, the variance is 1.5' and the building will not present any obstructions; 4) Does the variance have an impact on the environment - any impact will be positive; 5) Is this a self-created difficulty - no, due to the degradation of the existing structure.

Mr. Lang questioned if Erie County responded or if 30 days have passed, or the Zoning Board can approve the variance pending Erie County approval.

Motion by Greenan, seconded by Lang, to close the public hearing and grant a variance provided that there is no objection from Erie County for property located at 3744 Clinton Street to erect a garage (24 x 40) with a 13' 6" midspan.

Ayes: All

Noes: None

Motion Carried

2024-57

Request of Kyle Kowal for property located at 985 Center Road for a variance to erect a 6' fence in front/side and 70' projection past house permitted (maximum 4' height allowed in front yard and 10' projection allowed).

Motion made by Hicks, seconded by Greenan, to table this until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

2022-046

Request of Melissa Fazio for renewal of a variance for property located at 165 Willowdale Drive to allow raising chickens on property (raising of poultry/farm animals not permitted).

Chairperson Hicks stated a 6-month variance had been granted and questioned if anything has changed. Mr. Fazio stated they accommodated the changes required by the Code Enforcement Office including moving the coop and reducing the number of chickens from 6 to 3. Mr. Busse confirmed the coop was moved to the opposite side of the property. Mr. Fazio stated they are requesting a continuation of the variance for a longer period of time. Mr. Stachowski stated generally variances for raising chickens is one year but noted there have been instances of longer or shorter for particular reasons.

Chairperson Hicks stated the applicant was asked to get neighbor signatures and stated neighbor signatures with no objection to the variance were received from residents at 161 and 155 Willowdale Drive, and 88, 86, and 94 Creekward Drive. Mr. Fazio stated they have been worked with the Code Enforcement Office, the Police have commented on how quiet the property is, the Erie County Department of Health performed an inspection, and the neighbors that signed the form do not have any complaints about noise.

Ms. Greenan questioned when the coop was relocated. Mr. Fazio stated it was relocated prior to June 1, 2024. Ms. Greenan questioned how the Department of Health became involved. Mr. Fazio stated they received a report about his property. Mrs. Fazio followed up with Erie County and was told they will not receive a letter of closure but will provide the contact information. Chairperson Hicks stated that is outside of the Zoning Board's realm, but noted the Code Enforcement Office provided an investigative report and between February 28 – November 12, 2024, Joe Cyran of 171 Willowdale Drive made 96 calls complaining about noise from the chickens. The times of the calls were made in the morning and afternoon. Ms. Greenan asked if all the calls indicated noise. Ms. Greenan questioned if there was any finding or violation. Mr. Busse stated the complaints were that the chickens were making noise, but he is not able to confirm this because he is not onsite. Chairperson Hicks questioned if anyone ever responded to the complaints and measured the noise level. Mr. Busse stated no one went out in response to the complaints and measured noise levels.

Mr. Stachowski stated the town has a history of permitting chickens under a use variance. In this instance the neighbors have signed off and commented that chickens make noise, as do people and cars. Mr. Stachowski stated the decibel level remains in place and there was no indication the three hens were over the decibel level. Mr. Busse stated in his experience chickens will not exceed the decibel level and in his opinion, this is a disturbance between neighbors.

Mr. Fazio stated his property does have video cameras on it.

Mr. Stachowski stated the Zoning Board could consider this as they would a barking dog, where some neighbors may be bothered, and others are not.

Chairperson Hicks asked if there were any public comments. Mr. Cyran of 171 Willowdale Drive was present. Chairperson Hicks questioned if Mr. Cyran had any new complaints about the chickens. Mr. Cyran stated he has sought legal advice from an attorney. Chairperson Hicks directed Mr. Cyran to reference back to his legal counsel and noted his 96 calls are part of the record.

Ms. Greenan stated the Fazzios compromised and moved the chicken coop and questioned if this had a positive effect for Mr. Cyran. Mr. Cyran stated the noise is louder.

Chairperson Hicks stated that generally variances for chickens are granted for one year unless there are special circumstances noting there have been approximately 30 variances over the past decade. Of these, there have been two complaints, and one was subsequently resolved.

Ms. Greenan questioned whether the reduction of 5 chickens down to 3 chickens alleviated the noise. Mr. Cyran stated it did not. Mr. Cyran questioned if a new variance is required if the quantity of chickens changes. Chairperson Hicks stated it is her understanding that the applicant was required by the supplier to purchase five chickens when replacing the chickens that had died and questioned the applicant if their intention was to keep all five and be in violation of the variance. Mr. Fazio confirmed the type of chickens they purchased came in a pack of five, noting they were smaller and quieter; it takes a few days to determine if they are hens or roosters. Chairperson Hicks asked the Fazio's to explain where they purchased the chicks and where the chicks were kept. Ms. Fazio stated the chicks come through the US Postal Service and were kept in a bird box the garage until it can be determined which are hens or roosters. Only the three hens were kept. Chairperson Hicks questioned how many days they had five chicks. Mr. Fazio stated they notified the Code Enforcement Office but cannot recall the dates. Chairperson Hicks asked if there were any other instances the Fazio's were in deviation of the variance. The Fazio's stated there were no other occasions.

Mr. Stachowski stated that while the neighbor has issue with the variance, the Zoning Board of Appeals is being asked to decide whether the use variance will be extended and should use the determining factors to make this decision. Mr. Cyran's primary complaint is the noise which points to the factor whether there is a change to in the characteristics of the neighborhood. Mr. Stachowski advised the board that anything within the past 6 months is relevant.

Mr. Cyran repeated his question - if a new variance is required if the quantity of chickens changes. Chairperson Hicks stated in her opinion, if the applicant intended to keep five hens, they would need to get approval to keep them and while they were in violation of the variance they could have been ticketed. Mr. Cyran continued to press the issue. Mr. Stachowski stated the Code Enforcement Office addresses violations, the Zoning Board of Appeals is not an enforcement agency.

Ms. Greenan questioned if there are other use variances for chickens on this street or the neighborhood. Mr. Busse stated not to his knowledge. Ms. Greenan suggested moving forward with the balancing test.

Mr. Cyran stated he has rats on his property and in his opinion, believes this is a direct result of the chickens.

Ms. Greenan stated she has not experienced the level of opposition to other use variances for chickens and in her opinion, this speaks to changing the central character of the neighborhood. Mr. Bedient stated he does not agree and stated there are rats in his neighborhood. Mr. Lang stated if there is a rodent problem, why are other neighbors not expressing opposition. Mr. Cyran stated the rat bait boxes are drawing the rats into his yard. Chairperson Hicks stated in her opinion, rats are everywhere in town. Mr. Busse stated in his experience, when rats are in a neighborhood, they are attracted to something there including animal feces, high grass, brush, and rotting wood. Chairperson Hicks stated this will not be a determining factor unless there is a path between the two properties (Mr. Cyran's and the applicant's).

Mr. Cyran asked how and where the chickens are fed. Ms. Fazio stated the food is suspended, it is not on the ground, and the chickens are fed in the morning and evening; the feed is stored in a secure aluminum garbage can. The chickens are let out during the day when Ms. Fazio is home to forage and eat bugs. The feces are

picked up in the same manor of the dogs' feces. Ms. Fazzio is not aware of a path from rats between the properties.

Ms. Greenan questioned the appropriate guidance for the Zoning Board to follow considering the proposed amendment to code regarding farm animals in R-100 districts. Mr. Stachowski stated the use variance test is very strict and every factor should be passed and until the local law changes, the proposed amendment has not been adopted. Ms. Greenan noted that there are not any instances where all factors of the use variance test are met and sought further guidance from Mr. Stachowski. Mr. Stachowski stated there is a precedent of allowing chickens but advised the board to use the test as it is intended under NYS law. In this instance there is a distinguishing factor not seen with other requests, there is a neighbor with very strong opposition to the use variance, but there are neighbors that have indicated they have no objections. Mr. Cyran stated he is retired and is in his yard more than his neighbors again insisting the chickens change the character of the neighborhood by affecting himself.

Ms. Greenan stated that she is inclined to deny the variance due to the strong opposition of the neighbor and this is unique to this situation. Mr. Fazzio stated they are in compliance and have worked with Code Enforcement. Mr. Stachowski stated having chickens is against the town's code, this is an appeal for an exception and must pass the use variance test.

Mr. Fazzio asked if the Zoning Board was concerned about being sued and if this was influencing their decision. Chairperson Hicks stated she is not and asked the applicant why they want three chickens. Ms. Fazzio stated she prefers fresh eggs, and the chickens are like pets. Mr. Fazzio stated there are many benefits to having chickens but did not provide examples.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – Yes, of course, purchasing eggs at a store, but as the applicant stated, they consider the chickens pets; 2) Is this a unique circumstance – Yes, there are approximately 30 property owners that have chickens in the town; 3) Does the variance change the character of the neighborhood – This is a matter of opinion, there are five households with no objection and one extremely opposed and further used an example of her neighborhood; 4) Is this a self-created hardship - Yes, but all use variances are self-created hardships and this is not the determining factor. In other instances, more chickens have been approved.

Motion by Bedient, seconded by Hicks, to grant a variance for property located at 165 Willowdale Drive to allow raising chickens on property for six months.

Mr. Stachowski stated under the strictest interpretation of a use variance, the applicant must prove the hardship is not self-created and instructed the Zoning Board members to use and rationalize the use variance test to the best of their ability.

Chairperson Hicks stated in her opinion, this is not a self-created hardship. Mr. Stachowski stated the board should consider the precedent and use variance test and make a decision.

Ms. Greenan reiterated that she will not support the request, noting the strong opposition of the neighbor and that chickens do change the character of the neighborhood.

Ayes: (3) Hicks
Bedient

Noes: (1) Greenan

Motion Carried

Lang

Mr. Stachowski instructed Mr. Cyran to document his concerns and forward them to the Code Enforcement Office weekly as opposed to making multiple calls. Mr. Cyran indicated he intends to continue his current behavior and feels Chairperson Hicks has an agenda against himself. Chairperson Hicks categorically stated she does not have an agenda against Mr. Cyran.

2024-51

Request of Logan Bruckman for property located at 4343 Clinton Street to allow a variance for the construction of an addition to existing dwelling of 35' front setback (front setback maximum 40').

Motion made by Hicks, seconded by Greenan, to table this until the January meeting because the applicant was not present.

Ayes: All

Noes: None

Motion Carried

2024-57

Request of Kyle Kowal for property located at 985 Center Road for a variance to erect a 6' fence in front/side and 70' projection past house permitted (maximum 4' height allowed in front yard and 10' projection allowed).

Motion made by Hicks, seconded by Greenan, to table this until the January meeting because the applicant was not present.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

Motion by Greenan, seconded by Lang, to close the public hearing and adjourn the meeting at 7:45 P.M.

Ayes: All

Noes: None

Motion Carried