

Chairperson Pam Knapp, called the regular meeting of the Zoning Board of Appeals of the Town of Walworth to order at 7:01 PM. Members present: Pam Knapp, Tony Laga, Mike Bagne and Gerald Champagne. Jim Hinz was absent. Town employees present: Phil Williamson, Code Enforcement Officer and Denise Munson, Town Attorney.

Tony Laga made a motion, seconded by Jerry Champagne to approve the minutes of September 2, 2008 as presented.

Roll Vote:	Tony Laga	Aye
	Jerry Champagne	Aye
	Pam Knapp	Aye
	Mike Bagne	Aye
	Jim Hinz	Absent

Motion carried.

**1. Application of Mark Sixbey of 3300 Evergreen Circle for Area Variance to allow poultry in an area less than the 5-acres required to be classified as a farm. Applicant seeks relief from Walworth Code Section §180-4 Definitions: Farm and Farm Animals. Property is zoned: PD - Planned Development (Public Hearing).**

Chairperson Knapp opened the public hearing.

Mark Sixbey, homeowner of the property was present to answer questions.

Chairperson Knapp asked the following questions:

- Do you currently have chickens on the property?  
They have been moved to a friend's home to make sure they we comply with current zoning.
- It says you have up to four chickens?  
Yes.
- Do you primarily use them for eggs?  
Yes, but they have become pets, too. Our children have raised them from chicks and they each their own distinct personalities.
- Are they primarily kept in the pens or are they allowed to run free range most of the day?  
The only time they are let to roam free is for about a half hour in the evening. They keep the grubs down on our property and eliminate the necessity to use pesticides.

Tony Laga stated, "I suppose you are aware of the current town code requires 5 acres for farm animals and that farm animals must be 100 ft. away from any property lines. Obviously you do not comply?"

Mr. Sixbey responded, "Yes, we are aware of the town code. The fact that the chickens are in a moveable pen, we are hoping that there may be some leeway. We have also done some research and found that several nearby towns, including Pittsford, Henrietta, Brighton and the City of Rochester allow chickens (hens, but no roosters) within the city limits on lots that are smaller than ours. We would like the town to consider that chickens are a different species of farm animal. We use the eggs that they produce. We actually feed them special feed so we have high omega eggs. So we look at this as a health issue. We do not let them outside of our property or in our house. As far as being a health concern, our children wash their hands after handling the chickens, much like a petting zoo. Our chickens are also vaccinated."

Tony Laga commented, "Someone in the neighborhood apparently does not share your feeling as I believe it was one of your neighbors that brought this issue to light." Mr. Sixbey stated, "Possibly, but our neighbors knew prior to us getting the chickens and did not have a problem with the chickens at that time."

Chairperson Knapp read the following letter to Phil Williamson from Bret DeRoo of the Wayne County Planning Department, dated September 26, 2008:

"At its regular meeting on September 24, 2008 the Wayne County Planning Board reviewed the the above referenced referral and recommended denial of the area variance as there are concerns about the impact having farm animals, as defined by the town code, in a planned unit development would have on a high density residential character of the neighborhood. The Board notes that the hardship criteria required to grant the variance must be substantiated at the local level."

There were no comments from the public.

Chairperson Knapp closed the public hearing.

Jerry Champagne made the following motion, seconded by Mike Bagne to deny the area variance.

I move, after considering the benefit to the applicant and the detriment to the health, safety, general welfare of the neighborhood or the community that would occur as a result of the variance being granted and taking into consideration the five factors set forth in Section 267-b(3b) and finding:

1. The granting of the variance will cause an undesirable change in the character of the neighborhood or a detriment to nearby properties because in a Planned Development there are no provisions for farm animals, as the lot sizes are substantially less than the 5 acres required by Town Code.
2. The benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue because the size of the lot restricts the ability to place the livestock at least 100 feet from property lines.
3. The area variance is substantial because the lot size (less than ½-acre) is significantly less than the 5 acres required by Town Code.
4. The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood because the introduction of livestock will change the character of the Planned Development community.
5. The alleged difficulty was self-created.

This Board finds that the findings it has made as set forth in factors, 1, 3, 4 and 5 outweigh the findings it has made as set forth in factor 2 and that substantial emphasis be given to factors 1, 3, 4 and 5 and by reason thereof, the Board concludes that the variance be denied since the detriment to the health, safety and welfare of the neighborhood or community outweighs the benefit to the applicant.

Roll Vote:	Tony Laga	Aye
	Jerry Champagne	Aye
	Pam Knapp	Aye
	Mike Bagne	Aye
	Jim Hinz	Absent

Motion carried.

Stephanie Sixbey expressed her disappointment with the Board's decision. Mrs. Sixbey felt that the Board was allowed to question her husband at length, but he was not given adequate opportunity to fully present his case. Her children extensively researched the subject prior to obtaining the chickens as part of a Boy Scout merit badge.

Mrs. Sixbey further commented that it had come to her attention that a member of the Board had questioned some of her neighbors about the presence of the chickens and they had said that the chickens do not smell, or create a nuisance. In fact, most of the people had no knowledge that the chickens were even there. Mrs. Sixbey stated, "I guess the bottom line is that the argument over and over again in the variance paperwork is whether or not there is a health issue or if there is a detriment to the neighborhood. Everyone asked, said there was no issue. So I think that alone speaks for itself." Mike Bagne said that Mrs. Sixbey was correct about that, but one neighbor did state that she would not write a letter because she did have a concern about property values. "What if we grant a variance today for you, but next week the neighbor two houses down want a goat?"

Mrs. Sixbey commented, "Walworth is primarily an agricultural community and not everyone can afford 5 acres because of the outrageous school and property taxes. Parents are forced to try alternative methods of raising their kids in a wholesome green environment. Other neighborhoods allow this with certain provisions." Mrs. Sixbey further stated that the person who probably made the complaint, did not have a concern a year ago. The only reason there is a concern now is that they are selling their house. She questioned why one should even bother seeking a variance, if nobody can get one. Chairperson Knapp responded that the Zoning Board often grants variances, but each case is decided on its own merit. "Town Codes are put in place to protect the entire neighborhood."

Phil Williamson stated that any resident that disagrees with his interpretation of the town code has every right to seek a variance through the process of a public hearing. Mr. Williamson commented that the public hearing was held and the Board made the final decision, therefore there was no need for further discussion on the matter. Again, Mrs. Sixbey expressed her frustration that her husband was not given more time to speak.

**2. Application of Home Leasing, LLC for Area Variance for the size and depth limitations of Open Water Ponds, located south of 3531 Canandaigua Road. Applicant seeks relief from Walworth Town Code Section §180-44 Pond Regulations. Property is zoned: PD – Planned Development (Public Hearing).**

Chairman Knapp opened the public hearing.

Jeff Leenhouts, Manager of Gananda Partnership was present to discuss the application, along with his father Nelson Leenhouts. Ryan Destro, of BME Associates of Fairport, Engineer for the project was also present. Mr. Leenhouts explained that he is requesting an area variance for the size and depth limitations of an Open Water Pond (less than 12,000 square feet and/or less than 36 inches in depth under zoning ordinance §180-44) to construct a 89,000 sq. ft. pond (Pond 'A') with a depth of up to 20 ft. and 2,430 sq. ft. pond (Pond 'B') with a depth of 7 ft.

Jeff Leenhouts explained that Pond A and Pond B will be connected as a way to regulate flow. At this time it is planned as private property for family use.

Mr. Leenhouts explained that no feasible way exists to construct an Open Water Pond stocked with fish without the variance. The proposed ponds are intended to serve as a source of passive recreation (fishing, walking, etc.) for the owner of the property. The depth of 36" would not be sufficient to allow fish including trout species to survive, as a depth of at least 5 ft. is necessary to provide the optimal environment for survival of fish. Mr. Leenhouts also pointed out that there are manmade ponds to the west of the site and well a several ponds at Blue Heron Hills Country Club to the east. The proposed ponds will be consistent with the surrounding area and there will be no adverse environmental impact on the neighborhood.

Chairman Knapp questioned if there are walking trails to the pond? Jeff Leenhouts said that there will be access to the pond.

Tony Laga questioned if there were future plans to subdivide the land and to sell as building lots? Mr. Leenhouts responded, "Not where the ponds are. It is possible that that the area on the hill, between the Senior Housing and the pond could potentially be developed. The ponds could actually serve as storm water facility for that, but there are no such plans at this time. Right now it is just for private family use." Phil Williamson stated that whether or not there are future plans to develop the land, is not the issue before the Board today. That would be something that would have to come before the Planning Board if that were to happen in the future.

Phil Williamson informed the Board that the original approval of the pond was granted on March 10, 2008, but because of the changes to the pond and the addition of Pond B, it must come before the Planning Board for modification after the variance is granted for size and depth limitations.

Mike Bagne questioned whether there would be access to the pond for emergency vehicles. Jeff Leenhouts responded that there would be. Ryan Destro added that the pond was engineered with a gradual slope for safety.

Chairperson Knapp questioned if the DEC had looked at the pond. Phil Williamson stated that he has spoken to Paula Smith of the DEC prior to the approval of Pond A and she said that it was of no interest to the DEC.

Phil Williamson also stated that the Town Board was in the process of reviewing the guidelines for open water ponds.

There were no comments from the public.

Mike Bagne made a motion, seconded by Jerry Champagne to close the public hearing.

Chairperson Knapp closed the public hearing.

Tony Laga made the following motion, seconded by Mike Bagne to approve the area variance for the size and depth limitations of an open water pond

I move, after considering the benefit to the applicant and the detriment to the health, safety, general welfare of the neighborhood or the community that would occur as a result of the variance being granted and taking into consideration the five factors set forth in Section 267-b(3b) and finding:

1. The granting of the variance will not cause an undesirable change in the character of the neighborhood or a detriment to nearby properties because of the nature of the area and that there are neighboring open water ponds of significant size east and west of the proposed ponds.

- 2. The benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue because the intended use requires a larger and deeper pond.
- 3. The area variance is substantial based on the current code of 12,000 sq. ft. in size and 35 inches in depth.
- 4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood because it has similar characteristics to the surrounding area.
- 5. The alleged difficulty was self-created; however, because the intent of the pond is for fishing, and requires a greater area and depth.

The Board determines that the findings it has made as set forth in factors 1, 2 and 4 outweigh the findings it has made as set forth in factors 3 and 5 and that substantial emphasis be given to factors, 1, 2 and 4 and by reason thereof, the Board concludes that the variance be granted since the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community.

There are no conditions placed on the variance.

Roll Vote:	Tony Laga	Aye
	Jerry Champagne	Aye
	Pam Knapp	Aye
	Mike Bagne	Aye
	Jim Hinz	Absent

Motion carried.

Mike Bagne made a motion, seconded by Jerry Champagne to adjourn the meeting.

Chairman Knapp adjourned the meeting at 7:56 P.M.

Respectfully submitted,

Gail Rutkowski  
Zoning Board Clerk

