

Town of Binghamton  
Zoning Board of Appeals Meeting and Hearing Minutes  
November 14, 2022 at 6:30 PM  
Town of Binghamton Town Hall

**Present:**

Members Present:

Tom Bensley  
Mark Bordeau, Chairperson  
Kevin Olds  
Meggan Olds, Secretary/Processor  
Alan Pope, Attorney  
Theresa Taro  
Tim Cooper, ZBA alternate

Town Officials Present

Nick Pappas - Code Enforcement

Guests

7 Guests

**6:30 PM CALL TO ORDER - Mark Bordeau**

1. Mr. Bordeau requested anyone who wishes to speak during the hearing please sign in

**ROLL CALL**

**MINUTES**

1. Approval of Zoning Board of Appeals Minutes – October 17, 2022 – Meggan Olds
2. Note: Amended to add Tim Cooper, alternate ZBA member, as present on 10/17/2022
3. Motion to approve as amended: Kevin Olds
  - a. Second: Theresa Taro
  - b. All voted in favor

**What ZBA needs to consider - Alan Pope**

1. Mr. Pope reviewed the Summary of Area Variance Criteria by NYPF, and provided the Board and Applicant with a copy of the criteria
2. Unlike a use variance, an area variance does not require all factors to be proven
3. Mr. Pope introduced himself and Mr. Bordeau
4. Ms. Seager clarified that there are no horses on her property. She also stated that this was the first time she had seen the area variance criteria.
5. Mr. Bordeau asked why we were looking at an area vs. use variance
  - a. Mr. Pope and Mr. Pappas explained that it is because the parcel is under 3 acres

## **Presentation by Karen Seager, Property Owner**

1. Ms. Seager read through the criteria, addressing each
  - a. Can the benefit be achieved by other means? Yes by purchasing items at market, but she wants to have full-time food security and healthy for her family
  - b. Would the variance cause undesirable changes in the neighborhood? Stated that she hopes not, and that they are trying to provide proper facilities for the animals and to minimize any smell
  - c. Is the request substantial? Ms. Seager responded that this is how they feed their family. She described that there was a barn when they moved in that they have done some work on, and that they will be closing in a shed, and have a small coop. Their priority is to contain the animals.
  - d. Will the request have adverse physical/environmental effects? She stated that the pigs have actually uncovered garbage, including buried car parts, and allowed the family to clean this up.
  - e. Is the difficulty self-created? Ms. Seager stated that it appears so now, but that when they bought the property, they were told it was zoned agricultural. They bought it so they could provide for their family, not knowing the zoning was not agricultural.

## **ZBA Board Discussion and Questions - Mark Bordeau**

1. Ms. Olds asked where Ms. Seager had received the information about the zoning classification. Ms. Seager stated that this information was provided by the real estate agent and mortgage broker. She noted that neighbors have animals, so evidence around them pointed to it being agricultural.
2. Ms. Taro asked for clarification on how many animals were currently present. Ms. Seager stated that there are 2 pigs, 7 turkeys, 2 fainting goats, 30 meat chickens, 4 great danes, and 4 indoor cats.
3. Ms. Seager then described the housing for the animals. The dogs are primarily indoors. They have 2 coops - large is 4'x3' and a smaller coop with turkeys. The barn is 11'x11' - this is where goats are at night and in adverse weather. They are penned during the day.
4. Mr. Bensley asked how long they have lived there. Ms. Seager stated she bought the property in November of 2020.
5. Mr. Bordeau asked how long they have been harboring animals. They began in January/February 2021, and added the pigs in November of 2021. The pigs were purchased to help reclaim the property from overgrown weeds and to root out garbage from the ground. Their goal is to now remove the garbage from the property.
6. Mr. Bordeau asked Mr. Pope to clarify the animal harboring legislation. Is Ms. Seager out of compliance because she has more than 4 of turkeys and more than 4 of chickens? There was discussion of the exact wording of the law, which is appended below.
7. Ms. Taro asked how the Seagers mitigate any smells? Ms. Seager stated that they use a combination of debedding and spreading, as well as the use of wood chips, rotation of the pigs' location, composting, and have recently changed the chicken feed. Anytime they notice a smell, they take care of it.
8. Mr. Bensley asked if 3 acres is the town rule, or a larger rule.
  - a. Mr. Pope stated this is a town regulation.
  - b. Ms. Seager stated that she thinks the law was changed in August in 2021, but was not in place in the fall of 2020 when they bought the home. Mr. Pope explained that language was clarified, but the regulations were not essentially altered.
  - c. Ms. Seager stated that she believed that the law changed from 2 to 3 acres as well. Mr. Pappas later clarified that it was not changed - it has been 3 acres.
  - d. Mr. Bordeau asked Mr. Pappas about the anonymous complaints he had received. Mr. Pappas confirmed they had been received, but that it is unclear whether they are from the same person.

9. Mr. Bensley asked Mr. Pappas if concerns over animal harboring are a recurring problem in the town. Mr. Pappas said that he does receive many complaints, and investigates them.
10. Mr. Bordeau provided Ms. Seager with a copy of the anonymous complaint letter the board had received, as she was unaware of it.

### **Public Comment Portion - Alan Pope**

1. Mr. Bordeau asked if there were any comments from the public. No one spoke.

### **Vote**

1. Mr. Bordeau requested a motion to be made by a board member regarding the variance. Instead of a motion, further discussion began.
2. Mr. Olds stated that the law is in place for a reason. If we give this variance, will this open the floodgates for others.
3. Ms. Taro stated that she admires what the Seagers are doing, but that this is a lot of animals.
4. Ms. Olds expressed concerns about the present containment and housing of the animals. Mr. Seager stated that the Humane Society had come to investigate and did not have concerns. He asked if Mr. Pappas had sent them. Mr. Pappas stated he did not. Then Mr. Seager said it was actually dog control that sent the Humane Society. It was clarified that nothing from dog control was shared with the board. Ms. Olds asked if there was anything in writing from the Humane Society regarding their site visit. The Seagers stated they did not have anything.
5. Kevin Olds made a motion to deny the request for an area variance. Ms. Seager asked if they were being denied because this would open up a concern for others? Mr. Olds explained yes. Ms. Olds spoke up that there is a concern about the number of animals on this 1.9 acre property, and the containment of the animals.
6. Mr. Bensley asked if the variance stays with the property, even when sold, if it is approved? Mr. Pope answered that yes - the variance stays with the property. He stated that the ZBA does have the option to approve the variance with conditions. Mr. Bensley then asked what the board felt about a middle of the road decision.
7. Mr. Pope stated that Mr. Olds' concern is setting a precedent. That's why we have a ZBA - we note specific factors. That way future applicants cannot claim "you did it for them, do it for me."
8. Ms. Olds asked if anyone else had driven by the property. Ms. Taro and Mr. Bordeau stated that they had.
9. Mr. Bordeau asked if the board wanted a variance with limit? Ms. Taro reminded the group that right now, there are 49 animals on less than 2 acres. Mr. Bensley suggested some possible limits.
10. Mr. Pope stated that Ms. Seager could withdraw her application and collect more information. Ms. Seager stated she may need to, as there are other neighbors out of compliance. She also stated that the previous owner didn't care for the animals that were there, and her animals are cared for.
  - a. Mr. Pope explained that if the application is withdrawn, she could be cited and have to go to court.
  - b. Ms. Seager asked if she could have a time frame to collect evidence. She also expressed that no one had told her there had been complaints, and that her other neighbors have sheep, goats, ducks, and likely don't have 3 acres. Mr. Pope stated that whether it feels fair or not, whether other people are violating or not doesn't matter. However, she could use the animal presence at the neighbors to show not changing the character of the neighborhood.

11. Ms. Olds asked Mr. Pappas if there were complaints about the previous residents and animals? He stated that there was a terrible problem at the residence for years. In the end, the people moved, and the animals were left behind, with some passing away abandoned. Mr. Pappas explained that when he gets a complaint, he investigates.
12. Mr. Pappas continued, explaining that the law reads that if you are in an agricultural district, there is no minimum acreage for a horse. Mr. Bordeau asked if this is agricultural, and Mr. Pappas stated it is not.
13. Mr. Bordeau asked who would cite the resident and require them to see the judge, should the application be withdrawn.
14. Mr. Bensley asked if a compromise could be made to a variance that says that the number of animals has to be reduced to a specific amount, and no additional animals added. Mr. Bordeau asked Ms. Seager if she would entertain this. Ms. Seager stated she would if she had to, but asked if she could return to have the number increased later. Mr. Pope stated she could, but it likely would be difficult.
15. Mr. Seager asked if they application was withdrawn, and they work to address the questions and get evidence, would they have a better chance? Mr. Pope explained that if they withdraw, enforcement moves back to Mr. Pappas. Mr. Pappas and Mr. Pope would then meet with the Seagers allow them options in a pretrial hearing or offer them to come to the ZBA. Ms. Seager asked if they would be immediately cited. Mr. Pope explained that this was Mr. Pappas' decision. Mr. Pappas agreed to work with them to create a plan.
16. Ms. Seager officially withdrew the application, and will work with Mr. Pappas regarding the situation.
17. Mr. Bordeau explained that we will meet again in January, which is a scheduled training with planning board.
18. Mr. Pope clarified to the Seagers that the fees have to be paid again.

### **Looking ahead**

1. No meeting in December
2. Next scheduled meeting will be a joint meeting with TOB Planning Board - TBD. Hearing would follow if needed.
3. Adjournment  
Motion: Kevin Olds  
Second: Bensley  
All in favor

### **ANIMAL HARBORING**

The keeping of any horses, cattle, sheep, goats, hogs, mules or other customary farm animals, the keeping of any animals or creatures customarily kept in zoos, and the keeping of any animals for sale, boarding, lease, hire or farming. Three acres or more are required to harbor animals defined as animal harboring. Animal harboring is also defined as the harboring of five or more of any one or more species of small domesticated animals such as dogs, cats, rabbits, pigs, chickens, fowl, or such similar animals, which also requires three acres or more. Roosters are not allowed in any residential district. Domesticated animals should be properly leashed, caged, penned or housed, and should not cause or present any health, safety, noise or odor issues.

§ 240-6 Definitions.

For the purpose of this chapter, certain terms and words are herewith defined as follows:

**ACCESSORY USE**

A use customarily incidental and subordinate to the principal use of a building.

**AGRICULTURE or AGRICULTURAL USE**

Is the employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops, or feeding (including grazing), breeding, managing, selling, or producing livestock, poultry, fur-bearing animals or honeybees, or by dairying and the sale of dairy products, by any other horticultural, floricultural or viticulture use, by animal husbandry, or by any combination thereof. It also includes the current employment of land for the primary purpose of obtaining a profit by stabling or training equines including, but not limited to, providing riding lessons, training clinics and schooling shows.

[Added 11-16-2010 by L.L. No. 19-2015]

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[Amended 8-11-2009 by L.L. No. 8-2015; 12-21-2021 by L.L. No. 6-2021]

§ 240-6 Definitions.

One or more persons occupying a dwelling unit and living as a single housekeeping unit.

**FARMING PURPOSES**

Raising agricultural products, livestock, poultry and/or dairy products on a tract of three acres or more. Does not include raising of fur-bearing animals, riding academies, livery or boarding stables and dog kennels. A "dog kennel" is a structure used for the harboring of more than three dogs that are more than six months old.