



# TOWN OF SOUTHPORT

1139 Pennsylvania Avenue  
Elmira, NY 14904

*Minutes Approved  
by Board of Appeals  
9/15/2021*

## BOARD OF APPEALS

### AGENDA

**WEDNESDAY, AUGUST 18, 2021**

#### **REQUEST FOR AREA VARIANCE**

Nathan Shields, 50 Bird Creek Road, Pine City, NY

#### **REQUEST FOR AREA VARIANCE**

Tina Jones, 327 Riverview Circle, Elmira, NY 14904

#### **REQUEST FOR AREA VARIANCE**

David Townsend, 325 Riverview Circle, Elmira, NY 14904

### **SOUTHPORT TOWN HALL**

1139 PENNSYLVANIA AVENUE

ELMIRA, NY 14904

7:00 pm

#### **Webex Meeting**

1-415-655-0002

Meeting number (access code): 179 423 7785

Meeting password: 8Sa23n5Mc2p

Minutes of the Zoning Board of Appeals, Town of Southport held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on August 18, 2021 at 7:00 p.m.

Board Members Present: Justin Faulkner  
Shawn Crater  
Belinda Combs  
Susan Silvers  
Edward Steinhauer  
Ken Wrigley, Alternate

Others Present: Leslie Connolly, Town Attorney, Via Webex  
Peter Rocchi, Town Code Enforcement Officer  
Dale Balmer, Town Code Enforcement Officer  
Bonnie Balok, Secretary-Zoning Board of Appeals

#### **Item No. 1 – Call to Order**

Mr. Faulkner called the meeting to order on or about 7:00 p.m. All Board members present.

#### **Item No. 2 – Approval of Minutes of July 21, 2021**

Mr. Faulkner advised the next item on the agenda was the approval of the minutes of July 21, 2021. Mr. Rocchi advised one word in the July 21 meeting minutes should be changed; page 2, paragraph beginning, "Discussion took place . . ." The word "property" should be changed to "pen". To read, ". . . pen is one hundred fifty (150') feet . . ." Motion made by Mr. Crater to accept the minutes as prepared with the correction ; seconded by Mr. Steinhauer. The minutes of July 21, 2021 were approved. Ms. Silvers and Mrs. Wrigley abstained as they were not present at July 21, 2021 meeting.

**Item No. 3 – New Business**

Chairman Faulkner explained because of the issues coming before the ZBA tonight, the ZBA sent a letter and resolution, dated July 28, 2021, to the Town Board requesting consideration of the review of the current Town Code §525-5---Agriculture Use Definitions and §525-7---Agriculture Use, Personal. The ZBA received a letter in reply, from the Town Board. The Town Board advised, because of considerable study and a recent update of the Code, the Town Board sees no need to amend the code at this time.

Chairman Faulkner advised the first public hearing is held for Nathan Shields, 50 Bird Creek Road, Pine City, NY 14871. The request is for an area variance to allow raising chickens and pigs in a R-1 zone on 1.4 acres, not in compliance with: Section 525 Zoning, Article V-Bulk Density Control Requirements and Section 525-33-Special Requirements

(A). Special requirements for each agricultural use identified and defined in Section 525-5 shall apply as follows:

(2) The keeping or maintenance of animals or animal waste for any use on any parcel shall not be less than 150 feet from any residence located on another parcel.

(7) An agricultural use, personal:

(a) Within any R-1 Zoning District that involves animals, shall have a minimum lot of 5 acres

Tax Map #: 117.04-3-4                      Zoned: R-1                      Current Use: Residential

Present:                      Nathan Shields  
                                    50 Bird Creek Road, Pine City, NY 14871.

Mr. Shields advised his family has a thirty pound (30 lb) pet mini pig that is kept outside in a pen, but has breakfast, lunch and dinner inside, sleeps inside and the pig is their pet. They have a compost started to get rid of odor and use for fertilizer. The family also would like to have hens, no rooster, which get rid of ticks. They have seen twenty plus (20+) ticks and he has been diagnosed with Anaplasmiasis, and his son has been treated for Lyme Disease. Mr. Shields confirmed the mini pet is a pet and not raised for meat. Mr. Shields explained they bought the home in the beginning of June and, prior to the purchase of the home, they had asked the previous owner about zoning regulations against farm animals and the owner assured them there were no problems and they moved in bringing the pet pig, no chickens. Mr. Shields advised the main concern is to obtain a variance for the pig. Mr. Shields, advised the pig, the family has, did get out of the pen when they first moved to Bird Creek Road. The family had to move in immediately after selling their other home, he built a pen, but it was the worse pen ever, and the pig got out; but since then he built a secure pen and the pig has never gotten out again. The family will not have roosters. They did have chickens for a while in their other home. Mr. Shields pointed out this is not just about pigs, he would like to have five (5) chickens and further the neighbors have all approved of this as they are in an agriculture zone.

Discussion took place concerning agriculture use, specifically agriculture animals; pet being different from livestock, and looking at the USDA definition, this pig is a pet not livestock. Looking at the guidelines for traveling with a pet pig, we should be very concerned a pet is not intended for resale, slaughter or meat.

Chairman Faulkner opened the meeting to the public, advising anyone wanting to speak must give their name and address.

Joshua Ring, 8 Rolling Acres Road, Pine City. Mr. Ring advised his family has chickens, but they are pets. Mr. Ring explained he had done research into the agriculture definition of livestock and pets and didn't think there was any problem, but then got a citation. The chickens are not what constitutes livestock, they are not an asset for money, we do not live off the chickens to sustain the whole house, not using the chickens for money, the children play with them, and didn't think chickens would be a big deal. Mr. Ring advised he grew up in Pennsylvania, he knows what a farm looks like. The question is do we have a farm or are we raising pets; family pets can be a rat, parakeet and some have ten (10) dogs.

**Item No. 3 – New Business** *(continued)*

Ms. Karen Miller, 8 Rolling Acres Road, Pine City, NY. Ms. Miller advised they just received the notices this weekend, they called and were told they could not get on the docket until next month because tonight's meeting was already taken, but they could come down to the meeting tonight. I am speaking at this hearing tonight concerning the pet pig, the animal is an emotional support animal, it is part of the family. We see many offices writing letters for emotional support animals.

Mr. Jason Roosa, 7 Dry Run Road, Pine City, NY. Mr. Roosa advised he is in favor of the pig at the Shields' home. Mr. Rossa advised he is in a Commercial neighborhood and he would be allowed to have a pig.

Ms. Michelle Murray, 52 Pine Hills Drive, Pine City, NY. Ms. Murray advised she is opposed to the area variance that is before the Board allowing chickens and pigs in a R1 zone on a substandard size lot. Ms. Murray read a statement for the record. In summary, Ms. Murray stated, Town Municipal Code, Chapter 525-Zoning, Article 3, Section 7d states, regardless of any other provision in this chapter any use that is not just offensive, . . . dust, noise, gas fumes, radiation is prohibited. R1 definition protects the integrity of the residential areas. Ms. Murray concluded she opposes all three (3) area variances being requested tonight.

Mr. Ed Steinhauer, 830 Mt. Zoar Street, Elmira, NY. Mr. Steinhauer advised he owns six (6) hens and they are a helpful aid in eliminating ticks and therapeutic for him. Mr. Steinhauer further advised moving into Southport and having six (6) chickens he didn't think there would be a problem, they are not livestock. Southport has a welcoming spirit and he believes in the ethics of Southport, he does not support nuisance animals or people.

Mr. Dale Balmer, Code Enforcement Officer-Town of Southport. Mr. Balmer advised he is opposed to all three (3) area variances being requested. Mr. Balmer read a statement for the record, and in summary, Mr. Balmer advised, in March 2018, the Town Board adopted revised definitions and special requirements related to Agricultural Uses in the town. The Town determined the need to require a minimum of five (5) acres, animals or animal wastes be located not less than one hundred feet (150') from a neighboring residence, each personal agricultural use be subject to a site plan review. *(Mr. Balmer provided a copy of the statement for the permanent file-dated August 18, 2021).*

Ms. Cartney Steinhauer, 830 Mt. Zoar Street, Elmira NY. We are neighbors to the Riverview Circle properties. I am in favor of the chickens and also the pig. Ms. Steinhauer advised there are certain areas in NY City now allowing chickens and pets of this kind. Ms. Steinhauer further advised, we should not be black and white thinkers when writing regulations because no one is asking for livestock or emus; no one is trying to disregard any regulations, we know what pets are. Ms. Steinhauer explained she lives immediately next door to a rooster and it is not a problem, people need to have pets, no one did this brazenly disregarding the law.

Christopher Gorham, 327 Riverview Circle, Elmira, NY. Mr. Gorham advised it is discriminatory to require five (5) acres. For a medium to low income family to be required to have five (5) acres, they can't afford five (5) acres, this requirement is discriminatory. Mr. Gorham further advised he doesn't believe there is one lot in a R1 zone that is on five (5) acres.

Mr. Jason Kellogg, 842 Mt. Zoar Street, Elmira, NY. Mr. Kellogg advised low density-R1 district would be out more in the country and requires five (5) acres; a high density-R3 requires three thousand (3,000') square feet per unit much less than five (5) acres. *(For the record, Mr. Rocchi advised this is for residential use; this doesn't pertain to pets/animals),*

Chairman Faulkner advised the Board received letters concerning this issue. Letter in Opposition-Rick and Maureen Beals, 49 Pine Hills Drive, Pine City, NY. Letter in Favor-Betsy Farmer and Jon Daher, 54 Bird Creek Road, Pine City, NY.

Discussion took place concerning what the definition of a domesticated animal is, if a variance was granted could stipulations be put on the variance, concerning minimum number of pets, minimum six and nature of a domesticated pet, or asking the Town Board to define a domesticated animal. Options were considered and it was determined that cats and dogs are listed in the Code and list number that owners can have. The ZBA cannot determine someone's pet. The ZBA can only read the rules and grant or deny a variance. Question was raised if an animal is considered a pet, why would the owner need a variance for a pet? The Town Board should determine the ZBA doesn't have the ability to make a decision of what is a pet or livestock. Concern was brought out that this might be a determination made by a judge. Also, what happens if there is an inclusion of one, is this an exclusion of others? Does this dictate one (1) acre per animal?

**Item No. 3 – New Business** *(continued)*

Ms. Erica Townsend, 325 Riverview Circle, Elmira, NY. Ms. Townsend asked if there was a way to differentiate between a pet pig and a pig farm?

Attorney Connelly: A pet is a domesticated animal who lives entirely indoors, such as a pig, snake; has attributes of a domesticated animals and the requirements of a domesticated animal, with very specific wording of regulations finding it is a pet. In this situation, the pig is not livestock, the whole question is, is it something that needs a variance? Commercial neighborhoods are different, not as heavily regulated. Residential District is the most restrictive, Industrial District is it's own location. A judge may say if not specifically identified in the Code, not a permitted one; absent an amendment to include a broad interpretation, animals need certain criteria. Attorney Connelly, suggested she didn't know why the ZBA couldn't ask the Town Board if the definition does/doesn't include domesticated animals. Definitions are so specific, we can't second guess what was in the minds of those who wrote this language. Question would be more appropriate to send back to the Town Board – what can we do, how do we treat domesticated animals, should the definition be less specific?

Mr. Crater explained the ZBA approached the variance problem with the Town Board, but the Town turned down the request for review. The problem with a variance is granting a variance for the property goes with the property for the life of the property. This Board did think about a permit, but the Town Board will not allow this.

Ms. Silvers explained it is possible to have a pet snake, but people can't have a pet chicken or pig.

Chairman Faulkner asked if there were any other public comments or callers on the phone with questions or comments? No responses received. Chairman Faulkner closed the public portion of the hearing. The applicant was requested to provide answers to the five (5) Area Variance Questions.

The applicant, Mr. Shields, provided the following answers to the area variance questions:

Q1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

A: *Mr. Shields: No. Nothing being harmed on a 1.4 acre lot. Neighbors are zoned agriculture. If the variance is granted, Mr. Shields advised he will be putting up a fence.*

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?

A: *Mr. Shields: Advised we went over this during the discussion here tonight and he might go to the Town Board.*

Q3. Whether the requested area variance is substantial?

A: *Mr. Shields: Advised he doesn't believe it is substantial; five (5) hens don't make noise, do provide manure and one (1) pig is manageable*

Q4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

A: *Mr. Shields: Advised exact opposite; chickens take care of the ticks and provide manure for the garden.*

Q5. Whether an alleged difficulty of compliance with the zoning requirement was self-created, which is relevant to the decision but shall not necessarily preclude the granting of the area variance?

A: *Mr. Shields: Advised he disagreed; he doesn't have livestock, he has a pet pig.*

The Board reviewed the five (5) area variance questions and provided their answers as follows:

Q1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

*Unanimous: No Combs, Crater, Silvers, Steinhauer, Faulkner – all no responses*

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue,

*Responses: No – 4 Yes - 1 Combs, Silvers, Steinhauer, Faulkner – No responses Crater - Yes*

Q3. Whether the requested area variance is substantial?

*Unanimous: Yes-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all yes responses*

**Item No. 3 – New Business** *(continued)*

Q4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

*Unanimous: No-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all no responses*

Q5. Whether an alleged difficulty of compliance with the zoning requirement was self-created, which is relevant to the decision but shall not necessarily preclude the granting of the area variance?

*Unanimous: Yes-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all yes response*

Mr. Crater made a motion to vote on the area variance in a R1 zone on 1.4 acres not in compliance with 525-Zoning Article V-Bulk Density Control Requirements and 525-33 Special Requirements for Nathan Shields at 50 Bird Creek Road, Pine City, NY. **Note: Motion made; no vote was taken on the motion; Motion failed**

Discussion took place concerning setting a precedent, possible stipulations, definition of domesticated animal(s), asking the Town Board for their definition of domesticated animal(s),

Mr. Steinhauer asked about including a stipulation on the variance, such as a revisit to the Code for domestic pets that don't fit into the classification. Area variance-specific for one (1) small pig and five (5) hens, no roosters.

Mr. Crater advised this would be setting a precedent. Listing something specific now would mean the ZBA would have to do that for all variances that come before the ZBA; going down a slippery slope.

Attorney Connelly advised, yes setting specifics on a variance, this would be setting a precedent.

Ms. Combs asked if the ZBA can set specifics in R1, such as the property would have to be adjacent to agriculture property.

Attorney Connelly advised this would be like putting the chickens before the egg. That's why we sent a memo to the Town Board. We would end up circumventing a fairly recent Town law. Now, the question is what is a domesticated animal? When we start to give variances for all different properties we are just watering the regulations.

Mr. Crater asked if the variance is denied, could the applicants go to court until Article 78?

Attorney Connelly explained yes, if the Town Board says no, that will make no difference to the ZBA because the ZBA will have made their decision.

Ms. Silvers advised a motion has been made and we should vote on the basis of the five (5) area questions.

Mr. Steinhauer seconded the motion with the stipulation the variance be granted based on one (1) domesticated pig.

Chairman Faulkner advised he is opposed to the motion and would like to keep the public hearing open until the ZBA can go back to the Town Board for clarification on the definition of a domesticated animal.

Attorney Connelly advised that is a different question that you could send to the Town Board asking for the definition of a domesticated animal. Attorney Connelly advised the ZBA could keep the public hearing open to gather input.

Ms. Silvers advised this is going to come up again and again because this is not about farm animals or horses; it's about small pets.

Attorney Connelly advised the ZBA can have a discussion with the Town Board requesting the definition of domestic animals.

Ms. Silvers advised not talking about livestock, we are talking about pets.

Mr. Crater made a motion opposing the variance to allow raising of chickens and a pig in R1 zone on 1.4 acres not in compliance with 525-Zoning Article V-Bulk Density Control Requirements and 525-33 Special Requirements for Nathan Shields at 50 Bird Creek Road, Pine City, NY. Mr. Faulkner seconded the motion.

Secretary Balok called the roll: Yes - Opposed: 2----- Mr. Crater and Mr. Faulkner  
No – Not Opposed: 3----- Ms. Combs, Ms. Silvers and Mr. Steinhauer  
**Note: Motion failed.**

Ms. Combs asked if the Board can do this on a case by case basis?

Attorney Connelly advised each applicant must be taken into consideration, on a case by case basis, and each has its own twists and turns, taking a cluster of requests you must consider the impact of those collectively as well. The Board must look at the overall impact.

Mr. Steinhauer made a motion to approve the variance for Mr. Shields. Seconded by Ms. Silvers.

Ms. Combs requested the following language be added to the motion: variance granted based upon the stipulation for one (1) domesticated mini pig, property must border agriculture land, no roosters, five (5) hens and no slaughtering.

Secretary Balok called the roll: No 1----- Mr. Crater  
Yes 4----- Ms. Combs, Ms. Silvers, Mr. Steinhauer  
Mr. Faulkner  
**Note: Motion Passed**

Variance granted. Next step, applicant must go to the Planning Board for review of a site plan approval.

Meeting Adjourned: 8:45 pm.

Original on File: Town Clerk  
C: Town Supervisor, Town Attorney, Town Code Enforcement Officer  
Board of Appeals Town Board Planning Board  
Minutes of 8/18/21 Nathan and Leah Shields, 50 Bird Creek Road, Pine City, NY 14871

Bonnie Balok  
Secretary-Zoning Board of Appeals  
August 20, 2021

See: Resolution No. 8

**Item No. 3 – New Business** *(continued)*

Chairman Faulkner advised the second public hearing is held for Tina Jones, 327 Riverview Circle, Elmira, NY 14904. The request is for an area variance to allow raising chickens in a R-1 zone on a lot (67.70 x 149.25), not in compliance with:

Section 525 Zoning, Article V Bulk Density Control Requirements and  
Section 525-33-Special Requirements

(A). Special requirements for each agricultural use identified and defined in Section 525-5 shall apply as follows:

(2) The keeping or maintenance of animals or animal waste for any use on any parcel shall Not be less than 150 feet from any residence located on another parcel.

(7) An agricultural use, personal:

(a) Within any R-1 Zoning District that involves animals, shall have a minimum lot of 5 acres

Tax Map #: 99.09-1-23                      Zoned: R-1                      Current Use: Residential

Present: Tina Jones and Christopher Gorham  
327 Riverview Circle, Elmira, NY 14904

Mr. Gorham advised they are requesting a variance to have three (3) hens on the property, no rooster, no slaughtering. They are teaching their grandson how to care for animals, get him outdoors and to respect life. Mr. Gorham explained they clean up the area on a regular basis. All neighbors, except one (1) are in favor of this request. Mr. Gorham advised they talked with everyone on Riverview Circle, Sharr Avenue and Holecek Avenue. There is an odor from any pet if you don't clean up after the pet, they make sure the area is clean. *(Mr. Gorham read a statement for public information).*

Chairman Faulkner opened the hearing to the public for comments, requesting names and addresses be provided.

Erica Townsend, 325 Riverview Circle, Elmira, NY. Ms. Townsend advised she lives right across the street from 327 Riverview Circle and their chickens don't create any problems at all.

Beth Russell, \_\_\_ Riverview Circle, Elmira, NY. Ms. Russell, I am opposing the variance. They have caused a disturbance in the neighborhood because I have had to keep calling Code Enforcement. Using manure on vegetables is very unsanitary and dangerous because it carries salmonella.

Karen Miller, 8 Rolling Acres Road, Pine City, NY. Ms. Miller advised they also has chickens. Using manure is not unsanitary. Chicken manure is good to use and the same is true for cow and horse manure. People come to their home asking for chicken manure. Chickens are a nice way to save money on eggs, teaching children, therapeutic and many neighbors come for eggs and to see the chickens.

Chairman Faulkner read letters received by the ZBA in opposition to the area variance *(Letters on file-permanent record)*

1. Debra VanDelinder, 416 Sharr Avenue, Elmira, NY
2. Suzanne Morrissey, 408 Sharr Avenue, Elmira, NY
3. Don Wood, 417 Sharr Avenue, Elmira, NY
4. Sandra Clark, 424 Hillview Drive, Elmira, NY
5. Richard Clark, 424 Hillview Drive, Elmira, NY
6. David Stonitsch, 410 Sharr Avenue, Elmira, NY

Erica Townsend, 325 Riverview Circle, Elmira, NY. Ms. Townsend advised the rooster they have starts crowing at sunrise, but they don't let the rooster out until 8:30 am. Ms. Townsend provided a rooster crowing schedule she prepared on Sunday (8/15/2021) and Monday (8/16/2021); 325 doesn't have a rooster. *(Schedule for 327 Riverview Circle was submitted to ZBA; on file-permanent record).*

Chairman Faulkner asked if there were any other public comments or callers on the phone with questions or comments? No responses received. Chairman Faulkner closed the public portion of the hearing. The applicant was requested to provide answers to the five (5) Area Variance Questions.

Mr. Gorham, 327 Riverview Circle, provided the following answers to the area variance questions:

**Item No. 3 – New Business** *(continued)*

Q1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

A. *Mr. Gorham: Advised No. Not undesirable; beneficial by reducing ticks.*

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?

A. *Mr. Gorham: Advised No. No other avenue to pursue.*

Q3. Whether the requested area variance is substantial?

A. *Mr. Gorham: Advised No.*

Q4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

A. *Mr. Gorham: Advised No; doesn't believe this creates a problem. Not disturbing anyone, fenced in coop and strong eco system controlling tick population. Vegetables and eggs are shared among the community.*

Q5. Whether an alleged difficulty of compliance with the zoning requirement was self-created, which is relevant to the decision but shall not necessarily preclude the granting of the area variance?

A. *Mr. Gorham: Advised Yes.*

The Board reviewed the five (5) area variance questions and provided their answers as follows:

Q1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

*Unanimous: Yes-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all yes responses*

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue,

*Unanimous: No-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all no responses*

Q3. Whether the requested area variance is substantial?

*Unanimous: Yes-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all yes responses*

Q4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

*Unanimous: No-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all no responses*

Q5. Whether an alleged difficulty of compliance with the zoning requirement was self-created, which is relevant to the decision but shall not necessarily preclude the granting of the area variance?

*Unanimous: Yes-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all yes response*

Mr. Crater, made a motion opposing the area variance to allow raising chickens in a R-1 zone on a lot (67.70 x 149.25), not in compliance with: Section 525 Zoning, Article V-Bulk Density Control Requirements and Section 525-33-Special Requirements for Tina Jones, 327 Riverview Circle, Elmira, NY. Mr. Faulkner seconded the motion and requested no stipulations.

Secretary Balok called the roll: Yes - Opposed 2----- Mr. Crater and Mr. Faulkner  
No – Not Opposed: 3----- Ms. Combs, Ms. Silvers and Mr. Steinhauer  
**Note: Motion failed.**



Ms. Silvers, made a motion to approve the area variance to allow raising chickens in a R-1 zone on a lot (67.70 x 149.25), not in compliance with: Section 525 Zoning, Article V-Bulk Density Control Requirements and Section 525-33-Special Requirements for Tina Jones, 327 Riverview Circle, Elmira, NY based on the property being one hundred ninety feet (190') from agriculture, coop is next to garage far back right corner, one hundred twenty foot (120') from closest neighbor's house to coop and this can be moved if needed; it was put there as a wind block, and the variance would have the following stipulation: Not more than three (3) hens, no roosters, no slaughtering, doesn't comply with one hundred fifty foot (150') setback, setback would be minimum set back of ninety feet (90') plus variance for chickens on less than five (5) acres, Ms. Combs seconded the motion.

Secretary Balok called the roll: No – Opposed 2----- Mr. Crater and Mr. Faulkner  
Yes – In Favor 3----- Ms. Combs, Ms. Silvers and Mr. Steinhauer  
**Note: Motion passed.**

Variance granted. Next step, applicant must go to the Planning Board for review of a site plan approval.

Meeting Adjourned: 9:20 pm.

Original on File: Town Clerk  
C: Town Supervisor, Town Attorney, Town Code Enforcement Officer  
Board of Appeals Town Board Planning Board  
Minutes of 8/18/21 Tina Jones, 327 Riverview Circle, Elmira, NY 14904

Bonnie Balok  
Secretary-Zoning Board of Appeals  
August 20, 2021

See: Resolution No. 9

**Item No. 3 – New Business (continued)**

Chairman Faulkner advised the third public hearing is held for David Townsend, 325 Riverview Circle, Elmira, NY 14904. The request is for an area variance to allow raising chickens in a R-1 zone on a lot (50 x 172.45), not in compliance with: Section 525 Zoning, Article V-Bulk Density Control Requirements and

Section 525-33-Special Requirements

- (A). Special requirements for each agricultural use identified and defined in Section 525-5 shall apply as follows:
- (2) The keeping or maintenance of animals or animal waste for any use on any parcel shall Not be less than 150 feet from any residence located on another parcel.
  - (7) An agricultural use, personal:
    - (a) Within any R-1 Zoning District that involves animals, shall have a minimum lot of 5 acres
- Tax Map #: 99.09-1-24          Zoned: R-1          Current Use: Residential

Present: David and Erica Townsend  
325 Riverview Circle, Elmira, NY 14904

Mr. Townsend explained their lot is more than one-half (1/2) acre, on the northern border there are fourteen (14) acres of agriculture property, the coop is built on the property line, surrounded on all sides by empty lots. The Townsend's have one (1) rooster and twelve (12) hens, all pets have names and they will never be slaughtered, they will live full lives. Mr. Townsend also explained he has secured a lease agreement with the property owner, who owns the agriculture zoned land, which allows for the coop not to be moved. Mr. Townsend advised they have gone to every neighbor and no one person has a problem with the rooster and chickens. Mr. Townsend further advised if a variance was granted he would fully comply with the variance. Mr. Townsend explained if they do not get the variance, they could lease the agriculture land.

Chairman Faulkner asked Mr. Townsend specifically, if they did not get a variance, could they lease the agriculture land, Mr. Townsend advised yes. Chairman Faulkner suggested if the Townsends have five (5) acres of agriculture land, they could have twenty five (25) chickens (*rooster or chickens*).

Mr. Crater mentioned, the Board just granted a variance, so the Townsends could have seven (7) or eight (8) chickens on their property.

Chairman Faulkner opened the hearing to the public for comments, requesting names and addresses be provided.

Cartney Steinhauer, 830 Mt. Zoar Street, Elmira, NY. Ms. Steinhauer they are one (1) step from the coop in an agriculture zone.

Mr. Rocchi, Code Enforcement Officer: The Townsends could have twenty five (25) chickens on five (5) acres. Agriculture zone is right next door, but the sounds of the rooster won't be solved by moving.

Chairman Faulkner asked if there was anyone on line who would like to make a comment or has a question?  
No response.

Beth Russell, 328 Riverview Circle, Elmira, NY. Ms. Russell advised the rooster is the problem.

Erica Townsend, 325 Riverview Circle, Elmira, NY. Ms. Townsend advised they would be willing to not have the rooster if they could get something in writing that allows the chickens.

Jason Kellogg, 842 Mt. Zoar Street, Elmira, NY. Mr. Kellogg advised he doesn't hear the rooster or chickens.

Chairman Faulkner asked if there were any other public comments or callers on the phone with questions or comments?  
No responses received. Chairman Faulkner closed the public portion of the hearing. The applicant was requested to provide answers to the five (5) Area Variance Questions.

**Item No. 3 – New Business** *(continued)*

Mr. Townsend provided the following answers to the area variance questions:

Q1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

A: *Mr. Townsend: Advised No. The temporary structure can be taken down. Not visible from the road. Not one person. who he spoke with, had an issue with the variance and he checked with the neighborhood before he moved in.*

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?

A. *Mr. Townsend: Advised No. Other than buying five (5) acres of land.*

Q3. Whether the requested area variance is substantial?

A. *Mr. Townsend: Advised No. .61 acres requested ten feet (10') into my property line.*

Q4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

A. *Mr. Townsend: Advised No. No impact; interviews with neighbors, no problems except one (1) and almost all surrounded by agriculture.*

Q5. Whether an alleged difficulty of compliance with the zoning requirement was self-created, which is relevant to the decision but shall not necessarily preclude the granting of the area variance?

A. *Mr. Townsend: Advised Yes. When I bought the chickens I didn't think there would be a problem. I grew up in Southport and years ago there wasn't a problem having chickens. I didn't know the laws had changed.*

The Board reviewed the five (5) area variance questions and provided their answers as follows:

Q1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

*Unanimous: Yes-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all yes responses*

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue,

*Unanimous: Yes-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all yes responses*

Q3. Whether the requested area variance is substantial?

*Unanimous: Yes-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all yes responses*

Q4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

*Unanimous: Yes-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all yes responses*

Q5. Whether an alleged difficulty of compliance with the zoning requirement was self-created, which is relevant to the decision but shall not necessarily preclude the granting of the area variance?

*Unanimous: Yes-5 Combs, Crater, Silvers, Steinhauer, Faulkner – all yes responses*

Chairman Faulkner advised the Board received a petition with seven (7) signatures in favor of the variance and the applicant submitted a record of the rooster crowing Sunday, 8/15/2021 (8:20 am-6:45 pm) total 52 seconds of crowing and Monday, 8/16/2021 (8:34 am-8:00 pm) total 42 seconds of crowing. (*Petition and Schedule on file*)

Mr. Crater, made a motion opposing the area variance raising chickens in a R-1 zone on a lot (50 x 172.45), not in compliance with: Section 525 Zoning, Article V-Bulk Density Control Requirements and Section 525-33-Special Requirements (A). Special requirements for each agricultural use identified and defined in Section 525-5 shall apply as follows:

(2) The keeping or maintenance of animals or animal waste for any use on any parcel shall Not be less than 150 feet from any residence located on another parcel.

(7) An agricultural use, personal:

(a) Within any R-1 Zoning District that involves animals, shall have a minimum lot of 5 acres.

Mr. Faulkner seconded the motion.

**Item No. 3 – New Business (continued)**

Secretary Balok called the roll: Unanimous----5 - Yes

Mr. Crater-Yes; Ms. Combs-Yes; Ms. Silvers-Yes; Mr. Steinhauer-Yes; Mr. Faulkner-Yes  
Motion Carried.

Variance Denied.

Meeting adjourned: 9:50 pm

Original on File: Town Clerk

C: Town Supervisor, Town Attorney, Town Code Enforcement Officer

Board of Appeals Town Board Planning Board

Minutes of 8/18/21 David and Erica Townsend, 325 Riverview Circle, Elmira, NY 14904

Bonnie Balok,  
Secretary-Zoning Board of Appeals  
August 20, 2021

See: Resolution No. 10

**Item No. 4 – Old Business**

Reviewed a letter received from Campanellia, & Associates, PC, 1757 Merrick Avenue, Merrick NY

Regarding 5G rollout cellphone towers.

Attorney Connelly advised the Town of Southport revamped the rules several years ago and then reviewed them.

The Town has already been through this.

**Item No. 5 – Discussion**

No further discussion

**Item No. 6 - Adjournment**

Motion by: Mr. Crater

Seconded: Ms. Combs

Unanimously approved

Meeting adjourned: 9:55 pm

Original on File: Town Clerk

C: Town Supervisor, Town Attorney, Town Code Enforcement Officer

Board of Appeals Town Board Planning Board

Minutes of 8/18/21 Nathan and Leah Shields, 50 Bird Creek Road, Pine City, NY 14871

Minutes of 8/18/21 Tina and James Jones, 327 Riverview Circle, Elmira, NY 14904

Minutes of 8/18/21 David and Erica Townsend, 325 Riverview Circle, Elmira, NY 14904

Bonnie Balok,  
Secretary-Zoning Board of Appeals  
August 20, 2021

**RESOLUTIONS  
2021**

**Resolution No. 8**

**AREA VARIANCE GRANTED**

PROPERTY:	TAX MAP NO. 117.04-3-4 COMMONLY KNOWN AS 50 BIRD CREEK ROAD	ZONED: R1  PINE CITY, NY 14871
APPLICANT:	NATHAN SHIELDS 50 BIRD CREEK ROAD	PINE CITY, NY 14871
OWNER:	NATHAN SHIELDS 50 BIRD CREEK ROAD	PINE CITY, NY 14871
RESOLUTION:	STEINHAUER	SECONDED: SILVERS

**WHEREAS**, Nathan Shields, 50 Bird Creek Road, Pine City, NY 14871, applied for an area variance to allow for the raising chickens and pigs in a R-1 zone on 1.4 acres, not in compliance with: Section 525 Zoning, Article V-Bulk Density Control Requirements and Section 525-33-Special Requirements (A). Special requirements for each agricultural use identified and defined in Section 525-5 shall apply as follows: (2) The keeping or maintenance of animals or animal waste for any use on any parcel shall not be less than 150 feet from any residence located on another parcel. (7) An agricultural use, personal: (a) Within any R-1 Zoning District that involves animals, shall have a minimum lot of 5 acres Tax Map #: 117.04-3-4 , Zoned: R-1, Current Use: Residential, and

**WHEREAS**, the Town of Southport Zoning Board of Appeals held a public hearing on August 18, 2021 at 7:00 p.m., or as soon thereafter as it could be heard, at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York, to consider the granting of an area variance, and

**WHEREAS**, based upon deliberation, consideration and discussion, the members of the Zoning Board of Appeals were of the opinion an area variance could be granted based upon the following determination and to include the following stipulations:

The area variance granted is based upon the stipulation for one (1) domesticated mini pig, property must border agriculture land, no roosters, five (5) hens and no slaughtering, and

**NOW THEREFORE BE IT RESOLVED** the area variance is granted to Nathan Shields, 50 Bird Creek Road, Pine City, NY 14871 50 Bird Creek Road, Pine City, NY 14871, Tax Map #: 117.04-3-4, Zoned: R-1, Current Use: Residential, and the building inspector of the Town of Southport be and hereby is authorized to issue a permit for said use and that failure to complete the project within one (1) year from the granting of this area variance will render the variance null and void.

Yes Votes: Combs, Silvers, Steinhauer and Faulkner  
No Vote: Crater  
Carried.  
August 18, 2021

***Resolution approved by Board of Appeals-9/15/2021***

**RESOLUTIONS  
2021**

**Resolution No. 9**

**AREA VARIANCE GRANTED**

PROPERTY:	TAX MAP NO. 99.09-1-23 COMMONLY KNOWN AS 327 RIVERVIEW CIRCLE	ZONED: R1  ELMIRA, NY 14904
APPLICANT:	TINA JONES 327 RIVERVIEW CIRCLE	ELMIRA, NY 14904
OWNER:	TINA JONES 327 RIVERVIEW CIRCLE	ELMIRA NY 14904
RESOLUTION:	SILVERS	SECONDED: COMBS

**WHEREAS**, Tina Jones, 327 Riverview Circle, Elmira, NY 14904 applied for an area variance to allow raising chickens in a R-1 zone on a lot (67.70 x 149.25), not in compliance with: Section 525 Zoning, Article V-Bulk Density Control Requirements and Section 525-33-Special Requirements, (A). Special requirements for each agricultural use identified and defined in Section 525-5 shall apply as follows: (2) The keeping or maintenance of animals or animal waste for any use on any parcel shall not be less than 150 feet from any residence located on another parcel, (7) An agricultural use, personal: (a) Within any R-1 Zoning District that involves animals, shall have a minimum lot of 5 acres  
Tax Map #: 99.09-1-23 , Zoned: R1, Current Use: Residential, and

**WHEREAS**, the Town of Southport Zoning Board of Appeals held a public hearing on August 18, 2021 at 7:00 p.m., or as soon thereafter as it could be heard, at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York, to consider the granting of an area variance, and

**WHEREAS**, based upon deliberation, consideration and discussion, the members of the Zoning Board of Appeals were of the opinion an area variance could be granted based upon the following determination and to include the following to allow the area variance allowing for the raising chickens in a R-1 zone on a lot (67.70 x 149.25), not in compliance with: Section 525 Zoning, Article V-Bulk Density Control Requirements and Section 525-33-Special Requirements based on the property being one hundred ninety feet (190') from agriculture, coop is next to garage far back right corner, one hundred twenty foot (120') from closest neighbor's house to coop and this can be moved if needed because it was but put there as a wind block, and the area variance will have the following stipulation:

Not more than three (3) hens, no roosters, no slaughtering, doesn't comply with one hundred fifty foot (150') setback, setback would be minimum set back of ninety feet (90') plus variance for chickens on less than five (5) acres,

**NOW THEREFORE BE IT RESOLVED** the area variance is granted to Tina Jones, 327 Riverview Circle, Elmira, NY 14904, Tax Map #: 99.09-1-23, Zoned: R-1, Current Use: Residential, and the building inspector of the Town of Southport be and hereby is authorized to issue a permit for said use and that failure to complete the project within one (1) year from the granting of this area variance will render the variance null and void.

Yes Votes: Combs, Silvers, and Steinhauer  
No Votes: Crater and Faulkner  
Carried.  
August 18, 2021

*Resolution approved by Board of Appeals-9/15/2021*

**RESOLUTIONS  
2021**

**Resolution No. 10**

**AREA VARIANCE DENIED**

PROPERTY:	TAX MAP NO. 99.09-1-24 COMMONLY KNOWN AS 325 RIVERVIEW CIRCLE	ZONED: R1  ELMIRA, NY 14904
APPLICANT:	DAVID TOWNSEND 325 RIVERVIEW CIRCLE	ELMIRA, NY 14904
OWNER:	DAVID TOWNSEND 325 RIVERVIEW CIRCLE	ELMIRA NY 14904
RESOLUTION:	CRATER	SECONDED: FAULKNER

**WHEREAS**, David Townsend, 325 Riverview Circle, Elmira, NY 14904 requested an area variance to allow raising chickens in a R-1 zone on a lot (50 x 172.45), not in compliance with: Section 525 Zoning, Article V-Bulk Density Control Requirements and Section 525-33-Special Requirements, (A). Special requirements for each agricultural use identified and defined in Section 525-5 shall apply as follows: (2) The keeping or maintenance of animals or animal waste for any use on any parcel shall not be less than 150 feet from any residence located on another parcel, (7) An agricultural use, personal: (a) Within any R-1 Zoning District that involves animals, shall have a minimum lot of 5 acres Tax Map #: 99.09-1-24, Zoned: R-1, Current Use: Residential, and

**WHEREAS**, the Town of Southport Zoning Board of Appeals held a public hearing on August 18, 2021 at 7:00 p.m., or as soon thereafter as it could be heard, at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York, to consider the granting of an area variance, and

**WHEREAS**, based upon deliberation, consideration and discussion, the members of the Zoning Board of Appeals were of the opinion an area variance could not be granted based upon inspection of the property, review of the area variance questions, residents concerns with the rooster and because there was an alternative available to the applicant to lease or buy the agriculture zoned acres adjacent to his property, and

**NOW THEREFORE BE IT RESOLVED** an area variance cannot be granted to David Townsend, 325 Riverview Circle, Elmira, NY 14904, ax Map #: 99.09-1-24, Zoned: R-1, Current Use: Residential, and the building inspector of the Town of Southport be and hereby is not authorized to issue a permit for said use.

Yes Votes: Combs, Crater, Silvers, Steinhauer and Faulkner  
No Votes: None  
Carried.  
August 18, 2021

*Resolution approved by Board of Appeals-9/15/2021*