

Chairperson Michael Kunzer called the regular meeting of the Zoning Board of Appeals of the Town of Walworth to order at 7:00 PM. The members present were Michael Kunzer, Tiffany Paine-Cirincione, Christine Kubida, and Charles Buss. Phil Williamson, Code Enforcement Officer; and Donald Young, Attorney for the Town (Young Law of WNY) were also present. Becky Appleman, Zoning Board member, was not present. The meeting was held at the Walworth Town Hall, accessible live to the public.

Chairperson Kunzer asked if there were any corrections to the minutes of June 6, 2022. Christine Kubida made a motion, seconded by Charles Buss, to approve the minutes of June 6, 2022. All members were in favor. Motion carried.

Chairperson Kunzer addressed the first item on the agenda.

**1. Application of William Murphy of 263 Ponds Way seeking an area variance for relief from Section 180-25 Parking and storage or use of major recreational equipment. Property is zoned R-Residential. (Public Hearing)**

William Murphy of 263 Ponds Way came forward to speak before the Board. Mr. Murphy said he is requesting a variance for his RV that sticks out 2 feet from the front of his garage. Mr. Murphy said his chimney is 6 feet wide and sticks out about 3 feet, and he cannot back the RV any farther because of the chimney. Mr. Murphy said he does not want to park next to the chimney because he would be too close to his neighbor’s property. Mr. Murphy said the RV does not cause a big hinderance and there are RVs in the neighborhood. Mr. Kunzer said the tongue of the trailer sticks out past the front garage corner and asked Mr. Murphy if he stores the RV in the winter. Mr. Murphy said it will there all year long.

Chairperson Kunzer asked if there were any more comments from the Board. No issues were brought forward. Chairperson Kunzer asked if there were any more comments from the public. No issues were brought forward. Chairperson Kunzer closed the public hearing at 7:06 PM.

Chairperson Kunzer read the Town of Walworth Zoning Board of Appeals Variance Determination Resolution:

With regard to Application at 263 Ponds Way for an area variance requesting relief from 180-25 Parking and storage of unregistered vehicles.

WHEREAS, the Zoning Board has 1) duly advertised and held a public hearing, 2) has considered all relevant information, and 3) has considered the potential benefit to the applicant versus the potential detriment to the neighborhood or community in relation to such Variance(s).

NOW, THEREFORE, BE IT, RESOLVED, that the Zoning Board of Appeals makes the following findings of fact:

1. The variance requested **is not** substantial since the camper sticks out in front of the garage minimally.
2. The purpose of the variance **cannot** be achieved by some other feasible alternative since the camper is located where it has to be on the lot.
3. The variance **will not** have a negative effect on physical or environmental conditions in the neighborhood or district.
4. The variance **will not** result in an undesirable change to the character of the neighborhood or a detriment to nearby properties since it is not very noticeable.
5. The difficulty relating to the variance **was** self-created because the applicant wants the camper.

AND, BE IT FURTHER, RESOLVED, that based upon the above findings, the Zoning Board of Appeals hereby **approve** the variance.

Christine Kubida made a motion, seconded by Charles Buss, to grant Michael Furlong the requested area variance.

|            |                          |     |
|------------|--------------------------|-----|
| Roll Vote: | Chairperson Kunzer       | Aye |
|            | Charles Buss             | Aye |
|            | Christine Kubida         | Aye |
|            | Tiffany Paine-Cirincione | Aye |

Motion carried.

Chairperson Kunzer addressed the second item on the agenda.

**2. Application of John Nadig of 5105 Fosdick Road seeking an area variance for relief from Section 180-21(B) No separate building shall be erected closer to the main building than five feet and not closer to the side yard line than 15 feet in RR-1. Property is zoned RR1-Rural Residential 1. (Public Hearing)**

John Nadig of 5105 Fosdick Road came forward to speak before the Board. Mr. Nadig said he is seeking a variance because his building is too close to the property line. Mr. Nadig said there was a shed previously on the property that was too close to the property line, but the neighbors had no problem with the existing shed. Mr. Nadig said he built this shed in line with that shed, the back door to the garage, and the front door of the barn. Mr. Nadig said the shed was built during COVID and finished in 2021.

Chairperson Kunzer asked if Mr. Nadig obtained a permit for the shed. Mr. Nadig said he did not. Ms. Kubida asked if Mr. Nadig knows exactly where his property line is to give an exact measurement of the distance of the shed from the property line. Mr. Nadig said the shed sits about 5 feet from the property line. Ms. Paine-Cirrincone asked what the shed is used for. Mr. Nadig said it is a tool shed and storage, and it is built on 12 4 x 4 concreted posts. Chairperson Kunzer said the survey shows the existing shed is 1 foot from the property line, and the newer shed looks like it is possibly over the property line. Mr. Nadig said the shed is not over the line since the property line angles to the south. Mr. Nadig said the newer shed and the existing shed are about 8 feet away from each other. Chairperson Kunzer said the Zoning Board is required to give the minimal amount of variance that the applicant needs, and without a survey showing exactly where the shed is placed, he does not have that number. Mr. Buss suggested the application be tabled and the applicant can come back with measurements. Mr. Nadig said he could take measurements. Chairperson Kunzer and Ms. Paine-Cirrincone said the Board needs a current survey to show the placement of the shed.

Chairperson Kunzer asked if there were any more comments from the Board. No more issues were brought forward. Chairperson Kunzer asked if there were any more comments from the public. No issues were brought forward.

Charles Buss made a motion, seconded by Christine Kubida, to table the application of John Nadig for the requested area variance. All members were in favor. Motion carried.

Chairperson Kunzer addressed the third item on the agenda.

**3. Application of Shaw Jennings of 3655 Walworth Road seeking an area variance for relief from Chapter 180 Zoning, Section 180-9, 180-10[A](2) by way of Section 180-13[B](1). Property is zoned Hamlet. (Public Hearing)**

Richard Williams II came forward to speak before the Board on behalf of Shawn Jennings. Mr. Williams said the barn is located within the setback requirements, but if the barn is going to be used for farming operations it needs to be more than 100 feet from any lot line and it is not. Mr. Williams said Mr. Jennings has approximately 40 animals for a part time business which are typically enclosed in the 4-acre fenced in area that has a lean-to. Mr. Williams said the variance substantiality of the barn being significantly close to 1 lot line is mitigated by the fact that it is going to be sporadically used during inclement weather and Mr. Jennings has installed a fence that keeps the animals and barn shielded from the neighbor's view. Mr. Williams said there is not a feasible alternative except to build a substantial structure that would comply with 100-foot requirement and would cost him thousands of dollars. Mr. Williams said he has signatures on a short letter that Mr. Jennings had signed by a number of people in support of his application and gave them to the Board.

Mr. Jennings came forward to speak before the Board. Mr. Jennings said he is relatively new to the Town, did not know some of the rules, and apologized. Mr. Jennings said he wanted to give his son the same opportunities he had growing up so he got a couple goats, and his son takes care of, buys, and sells the animals. Mr. Jennings said at least 6 or 7 people who adjoin his property signed the short letters, and there is a trail from Tops to his property because people love and feed the animals.

Ms. Kubida asked if the animals were previously housed in the structure and how often. Mr. Jennings said he has the animals in the barn during inclement weather or if there is an animal that is expecting or giving birth, but he prefers to keep them outside. Ms. Kubida asked Mr. Jennings if he purchased the property in 2020 and how long he housed animals. Mr. Jennings said he has housed the animals since he got here in 2020. Ms. Kubida asked if the 40 to 50 animals housed on the property includes the litters. Mr. Jennings said he has 1 pig that is not ever going to get pregnant, they have 2 baby donkeys born within the last month, the goats have 2 to 3 at a time, and his son sells them on Craigs List. Mr. Jennings said the goats have a litter once a year.

Ms. Kubida said to north he has a fence and asked what Mr. Jennings has on the south side. Mr. Jennings said he has nothing on the south side. Ms. Kubida asked if Mr. Jennings has a cattle run to move the animals from the pasture to the fenced area. Mr. Jennings said he does not. Mr. Williams said the fence that was put up from the front corner of Mr. Jennings lot runs along the side of his neighbor's lot as shown on the survey map. Chairperson Kunzer asked if the fence

keeps the animals contained. Mr. Williams said it does not because it does not wrap all the way around. Mr. Jennings said he left an 18-foot section open, but he will extend the fence if the Zoning Board requires it.

Chairperson Kunzer said the applicant is asking for a fairly significant variance is about 23 feet from the property line. Mr. Williams said he agrees except the use of the barn will be sporadic and this would be a significant mitigation of any distance substantiality. Chairperson Kunzer asked how far the barn is from the south property line and does it meet the 100-foot requirement. Mr. Williams said the south side of the barn is fine since the lot widens out. Mr. Buss said the barn is 28 feet from the south property line. Ms. Kubida states there is only about 40 feet on the south side of the barn. Mr. Williams said he agrees.

Ms. Kubida asked how Mr. Jennings will determine when the animals should go in the barn. Mr. Jennings said he knows what degrees they should not be outside and that will determine when they should go in. Mr. Williams said they will go inside during inclement weather.

Chairperson Kunzer asked the applicant if he has received any correspondence from the Town in regard to the animals or the barn. Mr. Williams said he has been in contact with Mr. Young and Mr. Williamson. He has also been in touch with Mel Halstead, Town of Walworth Sole Assessor, since Mr. Jennings has 2 separate lots, a 2.5-acre parcel and a 22.71-acre parcel, which he needs to combine.

Chairperson Kunzer said the reason the applicant is requesting a variance is because the lot is in a residential area, and he said the lean-to shelter that Mr. Jennings uses for the animals during the summer is on the 22-acre parcel. Mr. Williams said that shelter is sufficient to during normal times but not safe and healthy during inclement weather.

Chairperson Kunzer asked if there were any more comments from the Board. No more issues were brought forward. Chairperson Kunzer asked if there were any more comments from the public.

Toni Natale of 3622 High Street came forward to speak before the Board and stated that she has been a resident at this address for almost 2 years. Ms. Natale said she is concerned for the 35 to 40 animals being put in the barn since she does not know if the barn is large enough. Ms. Natale said she is concerned about grain that is a food source for rats, and the animals are close to the main road and in the barn, so residents are experiencing rats. Ms. Natale said the applicant has other feasible means to house the animals since he has 22 acres, and when he brought the animals, he should have given consideration to the Town Codes and built a facility for them before the inclement weather. Ms. Natale said the effect that this will have on the character of the neighborhood is the neighborhood cat, Arlo, traps and hunts the rats that may have been poisoned. Ms. Natale said this difficulty was self-created since Mr. Jennings purchased the property and brought the animals to the property. Ms. Natale said it is a detriment to have the rats, rodents, flies, and different things that are going to come from having pigs and goats close to a house. Ms. Natale submitted 29 signatures to the Board.

Chairperson Kunzer asked the Board if they if they had any questions. No issues were brought forward.

Jenna Camacho came forward to speak before the board and read the letter dated September 1st , 2022:

My name is Jenna Camacho, and I am a resident of Main St in Walworth. I have been a resident of Main St. since March of 2018. And I absolutely love living in the Walworth community. I also have strong family roots here and want nothing more than for our Town to thrive. However, I do not feel that the variance that is being requested by Mr. Jennings should be granted.

At this time, I do not believe that even with the variance of the barn on the property will take care of any outstanding issues that we have in the hamlet. On an almost daily basis the farm animals, goats', pigs and donkeys are lose in the hamlet area including but not limited to my yard, neighboring yards, decks, back porches, gas stations and fire hall. This creates an issue for resident in the areas in which we live in.

I am always finding animals droppings in my yard. My children are unable to play like they should because they are having to look out for donkey and goat droppings. Not only are we dealing with animals in the yards I have also witnessed the pig chasing a runner with her dogs down the road. And the goats in the street getting very close to getting hit my passing cars. I also worry about injuries. Yes, I know most animals are not mean however I do know they can be. What is to happen if a child gets bitten by one of these animals? Or a car hits the donkeys or goats? Who is then responsible? Do we have to worry about our insurance rates going up because we hit an animal and there is damage to my car?

Another issue with having the variance and allowing animals to live so close to houses and property line is the rat problem. I know myself and neighboring residents have also had rats in their homes. This was never a problem before the

“farm” moved into town. The barn creates a place for them to get food/ water and then move to the houses for shelter in the winter when it is cold out.

I understand we live in an agriculture area however we are also in the hamlet. And we the residents deserve to live in our yards without dealing with farm animals that do not belong to us. Past shows us that the animals are not contained to the “fenced in” area claimed in the application, and they will continue to not be. When the animals are housed in the barn in question currently, they still get out and are loose to roam wherever they want. And even with a variance they will continue too not be contained. It would be advisable to have a new shelter away from the property lines along with a way to keep the animals in the line of the property owner and maybe to finish fence to be finished that is only half done even though that has been stated as completed.

I would encourage our zoning board to look at the current code and get it up to date. We need to have proper zoning for farm animals. There should be rules and regulations about the lives

tock being contained and taken care of. Farmers should be held responsible. I would like to see if someone is going to house animals that they are required to keep them fenced in on their property. This should go for any farm. I do understand things happen and once and a while animals get lose. But an almost everyday occurrence is unacceptable to the residents.

I appreciate your time and listening to my concerns

Respectfully, Jenna Camacho

Chairperson Kunzer asked Ms. Camacho where she lives. Ms. Camacho said she lives next to the Methodist Church. Chairperson Kunzer asked the Board if they if they had any questions. No issues were brought forward.

Michael Jennejohn of 3609 Walworth Road came forward to speak before the board and stated that he has been a resident of Walworth since 1986. Mr. Jennejohn said since the winter of 2020 he has an increased problem with mice, he had 2 rats in his house in 2020 that he never had before, and last winter he had 3 rats. Mr. Jennejohn said he feels the storage of food and the maintaining and feeding of animals so close to the homes is the culprit in this matter. Local businesses and restaurants have food storage regulations and pest management programs, and he would like to know what the pest management program is on this premise. Mr. Jennejohn said he has encountered on multiple occasions goats near the road and traffic. Mr. Jennejohn said he sees multiple donkeys and goats running loose on this property on a regular basis, and the owners do not appear to have any control over the animals. Mr. Jennejohn said last spring his dog found the carcasses of 2 dead goats laid together on an adjoining property so he would like to know what Mr. Jennings program is to remove deceased animals from the property.

Chairperson Kunzer asked the Board if they if they had any questions. No issues were brought forward.

John VanCuyck of 3663 Walworth Road came forward to speak before the Board and stated that he has been a resident at this address for 16 years. Mr. VanCuyck submitted pictures to the Board to show how close the barn is to his swimming pool and deck and showing the animals on Mr. VanCuyck’s property. Mr. VanCuyck said the rats are a problem since he caught 3 rats this year inside his house; the animals come onto his property; and it is not true that the applicant has a fence since it is not complete and has 6 foot deep by 2-foot round holes that the kids can fall into. Mr. VanCuyck said if Mr. Jennings is allowed to store the animals in the barn for the full winter, the odor will stink up his patio during the summer months. Mr. VanCuyck said they are hooved animals with horns around his children while they play, and Mr. Jennings does not have the animals properly contained on his property, so they are all over town. Mr. VanCuyck said the animals have damaged his property.

Chairperson Kunzer asked the Board if they if they had any questions. No issues were brought forward.

Dan Miles of 3634 High Street came forward to speak before the Board and stated that he has been a resident almost 15 years. Mr. Miles said the last 2 years the neighborhood has been loud, and when it was brought to Mr. Jennings attention it was met with retaliation. Mr. Miles said a lot of people did not want to add their signatures due to the potential for retaliation. Mr. Miles said his understanding is that barn was never to be used for farm animals and he believes that Mr. Jennings housed the animals in the barn last year against the Town Ordinance.

Chairperson Kunzer asked the Board if they if they had any questions. No issues were brought forward.

Mabel Risley of 2187 Church Street came forward to speak before the Board. Ms. Risley said when she mows grass, she does not expect to see donkey doo doo in her yard, and she does not want to have to mow over donkey doo doo. Ms. Risley said she has a picture of a donkey in her neighbor's yard.

Chairperson Kunzer asked if there were any more comments from the public. No more issues were brought forward.

Mr. Williams and Mr. Jennings came forward to speak before the Board. Mr. Williams said the applicant apologized for his prior behavior and his effort to face this area variance head on is one of his attempts to be neighborly. Mr. Williams said Mr. Jennings only feeds his animals hay and rats like grain, and the rats could be coming from a chicken farm across Church Street and Tops Market. Mr. Williams said Mr. Jennings acknowledges the fact that he not been as diligent as he should have been with the animals escaping since he views them as friendly animals that everybody loves, but Mr. Jennings is hearing tonight that maybe everybody does not love them as much as he does. Mr. Williams said this area variance is only related to the barn and has nothing to do with the fact that there are animals there, or potential issues with rats, or the animals escaping to other people's property. Mr. Jennings is willing to extend the fence so it goes all the way around and encompasses the barn so the animals will be enclosed by the fence at all times, and the Board can make this a condition of the variance.

Mr. Jennings said that he has tried to be neighborly and installed the neighbors' roofs at cost. Ms. Paine-Cirrinzione asked Mr. Jennings if he housed animals in this barn last year. Mr. Jennings said when he received a letter stating he had to move the animals, he built the lean-to and moved the animals, and he does not remember what months they were in the barn. Mr. Jennings said he sold a large portion of the animals since the lean-to could not sustain all of them.

Ms. Paine-Cirrinzione asked Mr. Jennings if he is defining inclement weather at thunderstorms as well. Mr. Jennings said he is not.

Mr. Williams asked that the variance be granted for the barn as it is set forth on the survey map and its distances from the north and south lot lines. Mr. Young asked if the animals would be kept in the barn for birthing and if that could be any time of the year. Mr. Jennings said they try to make sure it is in the spring but occasionally a buck will get out. Mr. Williamson said the barn is located less than 100 feet required by the zoning law.

Chairperson Kunzer asked if there were any more comments from the public.

Mr. VanCuyck came forward to speak before the Board. Mr. VanCuyck approached the Board with a video and said Mr. Jennings is not a nice neighbor. Mr. Young asked Mr. VanCuyck if he has had any issues with noise. Mr. VanCuyck said he has called the troopers because Mr. Jennings parks his 4-wheeler next to his pool all summer to let it run. Mr. Young asked Mr. VanCuyck if he has observed animals in the barn during the non-winter months. Mr. VanCuyck said he has, and he has a pending court case on that. Mr. Young said to clarify there is a code enforcement action pending in court and there is a court date set for later in September. Mr. Williams said the court proceeding does not have anything to do with the are variance for the barn.

Chairperson Kunzer asked if there were any more comments from the public. Chairperson Kunzer closed the public hearing at 8:22pm.

Chairperson Kunzer asked the Board if they were ready to proceed with making a decision. Mr. Buss and Ms. Paine-Cirrinzione said they were ready to proceed. Ms. Kubida said the Board should discuss the questions and see if the Board is at an impasse due to too much information at this point. Mr. Young said this application is to use the barn to keep animals in it within a distance of less than the 100 feet required since the applicant is asking for a 23-foot setback. Chairperson Kunzer said the barn is also short by 70 feet on the south side and asked if this would be another variance that could be included in this variance. Mr. Young said the applicant did not include both sides on the application but would like to amend it tonight. Mr. Williams said that is correct. Mr. Young said the original scope of the application would be expanded so the application would need to be re-advertised and the Zoning Board would need to re-hear it. Ms. Paine-Cirrinzione asked if the application was public before the meeting. Mr. Young said it was. Mr. Young said the Board can deal with the application tonight or wait until the next meeting so the application can be re-advertised with the addition. The Board members stated they would like to proceed.

Chairperson Kunzer read the Town of Walworth Zoning Board of Appeals Variance Determination Resolution:

With regard to Application at 3655 Walworth Road for an area variance requesting relief from Chapter 180 Zoning, Section 180-9, 180-10[A](2) by way of Section 180-13[B](1).

WHEREAS, the Zoning Board has 1) duly advertised and held a public hearing, 2) has considered all relevant information, and 3) has considered the potential benefit to the applicant versus the potential detriment to the neighborhood or community in relation to such Variance(s).

NOW, THEREFORE, BE IT, RESOLVED, that the Zoning Board of Appeals makes the following findings of fact:

1. The variance requested **is** substantial since it is 77% of the required distance.
2. The purpose of the variance **can** be achieved by some other feasible alternative since there is ample room to build a barn on the remaining land.
3. The variance **will** have a negative effect on physical or environmental conditions in the neighborhood or district since the barn will have odor and rodents and vermin. Noise will also be a concern.
4. The variance **will** result in an undesirable change to the character of the neighborhood or a detriment to nearby properties since the barn will not change but the use of it will.
5. The difficulty relating to the variance **was** self-created because Mr. Jennings has animals he wishes to house in a barn.

AND, BE IT FURTHER, RESOLVED, that based upon the above findings, the Zoning Board of Appeals hereby **denies** the variance.

Christine Kubida made a motion, seconded by Tiffany Paine-Cirincione, to deny Shawn Jennings the requested area variance.

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|------------|--------------------------|-----|
| Roll Vote: | Chairperson Kunzer       | Aye |
|            | Charles Buss             | Aye |
|            | Christine Kubida         | Aye |
|            | Tiffany Paine Cirincione | Aye |

Motion carried.

Chairperson Kunzer addressed the fourth item on the agenda.

**4. Application of Lori Woods of 4007 West Walworth Road seeking an area variance for relief from Section 180-43.1[A] Home Occupation Major (Category B)(1) by way of Section 180-13[B](1). Property is zoned Hamlet. (Public Hearing)**

Lori Woods of 4007 West Walworth Road came forward to speak before the Board. Ms. Woods said she has a 40-foot x 100-foot barn that was Town approved and she would like to be able to train dogs in it. Ms. Kubida said she went to the property at 4007 West Walworth Road and spoke with Ms. Woods. Ms. Kubida said that Ms. Woods explained that she has been in the dog business for 32 years, has a DBA, and has operated dog agility training in her backyard during the summer months and rented an indoor facility during the winter. Ms. Kubida said that Ms. Woods has outdoor lighting, indoor lighting, cameras, a parking lot, an outdoor porta potty, white vinyl fencing on the south side of the property, and custom flooring inside the building. Ms. Woods said that she has people pay her to use the building to teach classes. Ms. Kubida asked how many people Ms. Woods rents the space to. Ms. Woods said she rents to 2 people.

Ms. Kubida said Ms. Woods needs to go to the Walworth Planning Board because this should be an application for a Special Use Permit not a Home Occupation Permit. Mr. Williamson read the following minutes from the Planning Board meeting of November 8, 2021:

Chairperson Johnson said the Board's recommendation is for Ms. Woods to submit a request with a detailed drawing and any supporting documentation for a special use permit and then the Planning Board can write a letter to the Town Board. Mr. Druschel said the engineered drawing needs to have the off-street parking plotted.

Mr. Williamson said that since Ms. Woods has other people renting space and conducting classes or working for Ms. Woods, this should be a Special Use Permit under Town Code 180-13(D)(14):

§ 180-13 Hamlet Districts: Multifamily/Neighborhood Business.

D. Uses permitted upon issuance of a special use permit, as provided in §§ 180-53 and 180-54 are:

(14) Other uses not specifically listed above but deemed by the Planning Board to be similar in nature and compatible with the purpose and intention of a Hamlet District. Such determination shall then be forwarded with the Planning Board recommendation to the Town Board for consideration and final decision.

Mr. Williamson said his determination is that this is something that would be allowed in the Hamlet District provided the Town Board agreed the recommendation of the Planning Board.

Ms. Kubida said there is no 5-acre requirement for a Special Use Permit. Mr. Young said Ms. Woods has a Home Occupation application on the Planning Board Agenda of September 12, 2021. Mr. Williamson said it was advertised as a Home Occupation so Ms. Woods would need to submit a Special Use Permit application to the Planning Board to be on the November Planning Board agenda.

Christine Kubida made a motion, seconded by Charles Buss, to defer the requested area variance to the Planning Board. All members were in favor. Motion carried.

Ms. Kubida made a motion, seconded by Charles Buss, to adjourn the meeting. All members were in favor. Chairperson Kunzer adjourned the meeting at 8:54 PM.

Respectfully Submitted,

Barbara Goulette, Clerk