

MINUTES OF A HEARING AS HELD BY THE
ZONING BOARD OF APPEALS OF THE
TOWN OF AURORA

June 15, 2023

CASE #1440-Daniel & Lynne Scepkowski
500 Center Street, East Aurora, NY

The hearing was called to order by the Acting Chairman Davis Heussler with the following Board members present:

Mandy Carl
Nancy Burkhardt
Rod Simeone
Stephanie Morgan, Alternate

Excused: Paul Ernst

Others Present: Elizabeth Cassidy, Code Enforcement Officer

The notice of the Public Hearing was read by the Deputy Town Clerk. The notice was duly published in the East Aurora Advertiser as evidenced by the Affidavit of Publication, marked as exhibit 1. The Affidavit of Posting was marked as exhibit 2. The ZBA Application was marked as exhibit 3. The Petitioners Letter of Intent was marked as exhibit 4. A Letter of Authorization was marked as exhibit 5. The Building Department Letter of Determination was marked as exhibit 6. The ECDP Form and Response was marked as exhibit 7. The Short Environmental Assessment form was marked as exhibit 8. A Photograph of the Coop was marked as exhibit 9. A Copy of the Survey was marked as exhibit 10. The List of Abutting Property Owners was marked as exhibit 11. A Letter of Concern w/ Photographs was marked as exhibit 12.

The Chairman opened the hearing with the Pledge of Allegiance to the Flag and stated the purpose and procedure of the hearing. Following the hearing a meeting would be held to render decision for a special use permit to keep chickens in a rural residential district at 500 Center Street, East Aurora, NY.

Scepkowski Lynne Scepkowski, 2650 Farrier Lane East Aurora.

Balcom Shelby Balcom, 500 Center St East Aurora.

Heussler You said you had the chickens for a while and did not know you needed a permit?

Balcom Yes we were past the breaking point.

Heussler You have six (6) chickens no roosters?

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Balcom Yes.

Heussler You have a pen where they stay?

Balcom I have 14' by 10' run and they have coop that is inside a shed that is 4' by 10' and the hen house is 4' by 3'.

Heussler They are not allowed outside of the run?

Balcom One of them got out once while I was bringing the food and water back in. She ran around for about five minutes, and I shooed her back in.

Heussler The intent is to keep them in the pen?

Balcom Yes.

Heussler Waste?

Balcom Yes, when I clean it I have contractor bags and I will bag it all then and put it out with the garbage. I looked into doing compost, but it is really complicated.

Heussler We did have a complaint from a neighbor.

Carl When did you get the chickens?

Balcom Before last winter, maybe at the end of August, beginning of September.

Carl Of 2022?

Balcom Yes.

Carl When did you put the shed up?

Balcom The shed was up. The shed was a few months later. I had them in a tractor supply coop before that.

Carl So when was the shed installed?

Scepkowski It was last fall we had it designed so the chickens could be in it also.

Balcom It took them almost 12 weeks to build it and we went in August.

Scepkowski They put it up last year, so the chickens were transferred to the coop then.

Morgan You were under the assumption that because it a right to farm sign that you were allowed to farm but building permits was kind of willy nilly too?

- Scepkowski You make it sound like we did it on purpose. We were told that we did not need a permit by the place that we bought the shed from so they came and put it up. When we got a letter I came right up to the building department and applied for the building permit.
- Balcom We were told that it was a moveable shed it was not something with a permanent foundation that we did not need a permit for it.
- Morgan It is the homeowner's responsibility to verify what anyone says to you. It is your obligation with a structure in your yard to verify that you have a large structure in your yard with no permits is concerning to me.
- Cassidy We did not know about the chickens because of the fence. When the shed came home we sent them the letter. When they came in we saw that they had chickens, and the chickens need permit too. So, we are here, we have not issued a permit for the shed, we have the application. Once the hearing is done we would be able to issue.
- Morgan There are no issues with having that shed back there?
- Cassidy That is fine.
- Simeone The chickens have been there approximately how long?
- Balcom The end of last summer, the beginning of last fall.
- Simeone Have there been any complaints?
- Cassidy Not on the chickens no.
- Wrazen Any complaints to you?
- Balcom No.
- Heussler One letter makes two allegations. They are talking about it being built illegally. One is about chickens running around in their yard. You said just one time they got away?
- Balcom There was one time where I witnessed them getting out. I do have a house mate and there may have been a time where he may have had it open where they could have gotten out. To my knowledge it only happened that one time and it was within our chain link fence, and it was all of 5-10 minutes.
- Heussler The other concern was that feces was being dumped in their yard.

Balcom I bagged it from a hay bale that was sitting outside of the chicken run that got wet during the winter and moldy, that when we took it apart we put it to the back of our property to the right side of our pile of sticks. That was hay that did not touch the chickens or any of their feces. That was from a moldy hay bale that I bought before the winter and was left out.

Heussler When you bag the feces it goes out to trash?

Balcom Yes I normally stick it in a normal garbage bag.

Scepkowski Are you saying they cannot run around in her yard even though it is fenced in? Is that not legal?

Heussler They are clearly not allowed in their neighbors' yard.

Carl Can you tell me about your experience with caring for and raising chickens?

Balcom All of the chickens that I do have, have come from one of my family members that one had a broken leg and when healed was not accepted back into that flock. I have two that were sick and were nursed back to health and then I have two that just would not integrate into my friend's flock. I have a veterinary background from when I lived in Georgia. I worked in an emergency veterinary clinic where we saw all sorts of animals. I have a lot of animal experience, but this is the first time I had my own personal chickens.

Carl Do you have any other pets?

Balcom I have special needs cats and I did have a dog that died recently. When I lived in Georgia I was the director of non profit organization, so I have a ton of animal experience.

Burkhardt Are these egg laying chickens?

Balcom Yes.

Burkhardt Do they have a box where they brood and everything?

Balcom They have three different nesting boxes within their hen house which is within the coop part of the shed. There is three layers of protection because two of them are not really cold hardy, so all the walls are insulated because of the one winter I had to keep them in a crate in the garage for a couple of days. When I got the shed I superinsulated it. They have three nesting boxes within there.

Burkhardt The eggs are they for personal consumption?

Balcom Yes.

- Burkhardt Are you going to be setting up any kind of farm stand?
- Balcom They are all for personal use within the house or my partner has three young boys that are obsessed with eating eggs.
- Burkhardt Is this an electrical cord or a hose going back there? You mentioned two of them are not cold hardy is there electric heaters or anything?
- Balcom I have a thermometer inside the coop that I checked and last year when it was low enough I had a heat lamp that we had in there. That was a hose to fill a pool in the summer.
- Burkhardt The chickens came from friends, and they are not cold hardy?
- Balcom They came from Tractor Supply in Lockport or Orchard Park, I am not sure which. You would think that they would sell chickens that were meant for our temperament here. It is not the case at Tractor Supply. One of them passed away after she had an issue with here crop. I had her euthanized immediately.
- Carl You had her euthanized at a veterinary clinic?
- Balcom Yes she was cremated. The whole thing about burying dead animals really freaks me out. She is cremated and is in a nice little box with chicken footprints on top and it is on the shelf with my other animals that have passed away. She was one of the non-cold hardy ones. Her sister still remains. Last year with the new coop we did not have to bring her in the garage at all during the winter.
- Burkhardt They sound like pets. Bringing them to a vet is nice of you.
- Balcom I spent almost a thousand dollars on her veterinary care. I care about them as much as I care about any of my other animals.
- Simeone One of the complaints that we had - it said that coyotes, hawks, fox etc. are attracted to chickens but there was a statement that said that the garbage cans, which I believe are on the outside of the house to the north are repeatedly dumped down the hill onto our property.
- Balcom Yes, the racoons get into whatever garbage cans that I buy. When my housemate goes to work at 9:00 he always picks them up then when he get home he says that the racoons got into them again. I even tried bungy cording them to our house but the problem in during the warm months we have them in our garage, and it smells horribly so at this time I am not sure what to do about it. Yes the racoons get into the garbage all the time.
- Simeone So they are the ones that knocked them over?

- Balcom Yes they are the ones.
- Heussler Are they attracted specifically to the waste or whatever?
- Balcom It is whatever food garbage there is.
- Heussler So it not related to the chicken garbage.
- Balcom The chicken garbage usually stays in the garage until it is garbage day then it goes out because it takes up too much room in the garbage cans.
- Heussler If we were to deny the permit the garbage problem would still be there?
- Balcom Yes.
- Carl You just said a moment ago that you do not keep the feces in the garage because it makes the garage smelly.
- Balcom No we do not keep the garbage cans in there because the food garbage and the garbage cans heating up during the winter and cat litter smells really bad in our garbage and you can smell inside the house during the summer. During the winter, the garbage cans are kept in the garage. I bought everything short of \$60.00 each.
- Morgan I can tell you that they do last a lot longer than the regular ones. I can keep it in my garage because I was having similar issues but those do not.
- Scepkowski I can attest that racoons get into a lot of people's garbage cans.
- Burkhardt Where are you keeping the chicken feed?
- Balcom I am keeping it in a metal garbage can that when you pull up the handle it locks that is kept inside the shed. The shed is also locked.
- Burkhardt Is it the shed that is in the application?
- Balcom Yes there is only one shed. There is a dividing wall in it. Four feet of it is for the chickens and the other side is for storage. The feed is in there. It was made for feed from Tractor Supply, and it locks when you pull the handle up, but the shed also has a latch on it.
- Heussler Is there anyone else that would like to speak on this matter?
- Grajeck T Terry and Ken Grajeck, 484 Center Street. We have been in the house for 47 years and watched the neighbors put a lot of money into additions and houses

along the way. We have put five additions on our house that was permitted for and supervised, and it has become a very lovely residential part of East Aurora on Center Street. Houses that have been increasing in value and when our neighbors came in they did a beautiful job on the front of the house and on the porch. It looks lovely. The fencing went in and at that time we talked to someone there that someone was interning with a veterinary clinic and that fencing was to corral dogs or a dog. We thought it was very generous of them to put up a wooden fence so the dogs would not see us and bark repeatedly. In our mind it was very neighborly thing to do. With the that wood fence there you cannot see what is actually is happening on the other side. When the large building that is there happened. We assumed that it was for the dog or garden something like that. Given the size of it being out of proportion but we were being neighborly, we did not want to go peek around the fence. When we discovered there were chickens it was alarming. We knew that it would need a permit and perhaps we would get a notification. When your letter came the first of June, I found the fact that they needed permit for chickens that were already there. We have seen them running in our yard. The they put up this giant netting thing. The building itself is, from our prospective, nicely done but the giant netting is very unsightly. It detracts from and increasing property value from that part of the neighborhood. It is very unsightly. The fact that the chickens are there, and we were not notified was alarming. The fact that we are receiving raccoon damage after 47 years that we never had before. Something is attracting them. We can only speculate what that is. Over the years with the garage facing us and the garbage cans that are lined against that wall regularly they get dumped. They do a decent job of picking up what is on their property eventually but what blows all over us and into our bushes and hedges and trees does not get picked up by them. We pick it up. The whole residential value of the neighborhood is impacted by the presence of this chicken coop and the precedent it might have in thing to come.

Heussler It is pretty common for people to have chickens in R-districts these days if they are properly taken care of. Which is our concern.

Grajeck Right but they need a permit to do that.

Heussler That is what we are here for.

Morgan Is your main issue not that there are chickens but the protocol?

Grajeck T For all of the years that we have lived there and the neighbors that we know about have done the due diligence and got the permits and the inspections and things that follow so that things are done accordingly.

Heussler We accept that they were remiss in that regard.

Grajeck K From an Architects point of view I think the structure that we keep saying coop, it is not coop. It is a garage, and it does not match anything that is there. It is not a

cape cod; the siding does not match the roofing does not match nor does the color match. It is wrong, and proportion is wrong. That is my opinion. Now let us step back about the garbage. We had neighbors before they moved in for how many years?

Grajeck T For the 47 years that we have been there.

Grajeck K They kept their garbage behind or east of the garage, against the garage never a problem. It was not facing our property because they recognized that they had neighbors. We do not want to see their garbage. No matter how many bricks you put on a can, why do we have to look at it? Our kitchen, patio, and outdoor space faces all of this. The good point is that there is a solid fence there, so we do not see most ground activity including chickens.

Morgan If there was landscaping that would visibly obstruct would that be something that would make you feel better about chickens being there. If they had landscaping that would obstruct your view of the ugly netting and everything else including garbage cans on their property. Would that be something that would make you feel better about that?

Grajeck T I think the precedence for that part of Center and that side of Center is important to us too.

Grajeck K We are speaking for people who are not here because your rule says there is a foot distance of notices. Our neighbor across the street was not notified so the distance must not be to him.

Heussler Can I just ask what the purpose the netting is?

Balcom That is to keep the hawks from getting in.

Heussler So that is a necessary component.

Scepkowski About the shed, it is a shed it is not a garage it is a shed. We got it at the Amish Villa up in Clarence and it was built by them. We plan to have her whole house sided and landscaping down. I do not know how they can see that netting.

Morgan You can see it they provided a picture.

Scepkowski It is necessary - it is chicken wire.

Morgan It is visual their property.

Grajeck T In the many years there has not been much communication between us. Not being informed of anything does not fall on us it falls on them for not having informed us of anything that has been happening as a neighborly concern.

Carl Lynn when did you purchase the property?

Scepkowski Just before COVID.

Balcom August 2019

Carl Who lived there.

Balcom It was bought for me to live there. I had two different roommates at that point.

Simeone I understand your concern about the garbage cans, I have the same issue. We cannot mandate them to move them to the other side of the house or the inside of the garage, but I understand what you are saying.

Morgan It is a neighborly thing.

Heussler They are hearing this, maybe they will move the garbage cans.

Simeone As far as the size of the accessory building it had to be within code, or the building department would not have permitted it.

Carl The shed is not currently permitted. They are holding the permit.

Grajeck K We were told that the builder was building or setting posts and that was when the building inspector that you needed the permit for the shed and chickens.

Simeone If they did not have chickens it would be a legal shed.

Heussler If we grant this permit it always has a year expiration and if there are issues during the course of the year and we might pull it at that point. They are going to understand that there have been some complaints if we grant it that they should do the best they can to address the complaints regarding the chickens. The shed is not relevant to this conversation. The fact that they did it without a permit is wrong, but it is not here for us to decide. Is there anyone else that would like to be heard on this matter? (No Response). The hearing is closed.

MINUTES OF A MEETING AS HELD BY THE
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June 15, 2023

CASE #1440-Daniel & Lynne Scepkowski
500 Center Street, East Aurora, NY

Discussion:

- Heussler Are there any thoughts concerns or comments?
- Carl One of my reservations is that the application is being made by a non-resident that is not caring for the chickens. I do think that it is important that it get corrected.
- Simeone I asked that question before you got here, and she said that the owner can make application that it is perfectly legal.
- Heussler The family that owns it gave authority to the resident to make the application.
- Carl It is a special use permit so it is for the applicant. I do have an issue with that. I think it should be the person actually caring for the creatures. I do not think we should be giving a special use permit to somebody who is not there taking care of them.
- Morgan If you have to go back you are talking to somebody who does not even live there so if there are issues, or you have to address something you are talking to a non-chicken owner.
- Heussler Would you like to see this tabled and have this application amended.
- Carl Is that how it has to go?
- Heussler You can approve it subject.
- Morgan Can I just ask another question? It is obvious that the owner of the chickens cares very much for the chickens as far as quality of care it seems to be a lot of questions floating around but are we allowed to issue a permit for these chickens and once they pass away they would have to get a new application?

- Cassidy That is almost impossible to do.
- Simeone We always grant for quantity up to 6.
- Heussler I get a sense that she is a fairly responsible chicken owner and does have a proper run and has a provision for the waste. It sounds like there are issues with garbage cans. We have history of approving these if the owner is responsible and I get the sense that she is. Knowing that there is a time limitation of one year on any approved permit.
- Carl I understand the neighbors' concerns but when I think about from the prospective that my dog ran through my neighborhood clearing different yard dragging a 50' chain, your pets do sometimes get out. It does not sound it is a routine problem.
- Cassidy In the event there is a complaint, or the chickens get loose then we have to investigate and verify. Also, in addition to your review you can also including "or upon a verified complaint" so you can bring it back in a shorter time frame.
- Morgan If we say no to having chickens on this property, what happens to the chickens?
- Cassidy The chickens have to be rehomed and a reasonable time frame would have to be set.
- Morgan We have had a lot of chicken applications, my only concern is that its not the care of the chickens it was the process.
- Carl We also have the backwards chicken approach with the place on Castle Hill.
- Morgan You also have the one in West Falls.
- Carl I think if we are doing this I would like the one year or upon a verified complaint call back.
- Heussler I would hope that the applicants have heard the complaints and try to address those beyond the chickens. I also think that we should require that the chicken owners name be added to the amended applications.

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Decision:

After due deliberation by the members of the Zoning Board of Appeals of the Town of Aurora, County of Erie and State of New York, the following motion was made by Mandy Carl and seconded by Nancy Burkhardt to grant a special use permit, with the amended application having the chicken owners name and contact information inclusive of the request, to keep six (6) chickens and no roosters on the property at the residence at 500 Center St., East Aurora, NY 14052 with a one year review unless a complaint is filed before the one year is up. This special use permit is granted in accordance with the testimony and exhibits presented.

Upon a vote being taken:

Heussler	Aye			
Simeone	Aye			
Carl	Aye			
Burkhardt	Aye			
Morgan	Nay	Ayes-four	Noes-One	Motion carried.

EXHIBITS

June 15, 2023

CASE #1440-Daniel & Lynne Scepkowski
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- Exhibit 1 Affidavit of Publication
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