

**CAUCUS PRIOR TO STRONGSVILLE BOARD OF ZONING &
BUILDING CODE APPEALS**

**Meeting of
November 16, 2022**

Board of Appeals Members Present: Ken Evans, Dustin Hayden, John Rusnov, David Houlé, Richard Baldin

Administration: Assistant Law Director Daniel Kolick

Assistant Building Commissioner: Brian Roenigk

Recording Secretary: Kathy Zamrzla

The Board members discussed the following:

1) JOANNA NEMETH, OWNER

- a) Requesting a 7,250 SF Lot Area variance from Zoning Code Section 1252.03 (e) (1), which requires a 20,000 SF Lot Area and where a 12,750 SF Lot Area is proposed in order to approve Live Poultry for four (4) chickens;
- b) Requesting a 22' Setback variance from Zoning Code Section 1252.03 (e) (1), which requires a 50' Setback from any residence and where a 28' Setback from the nearest residence is proposed in order to approve a Chicken Coop;
- c) Requesting a 48' Setback variance from Zoning Code Section 1252.03 (e) (1), which requires a 50' Setback from the West property line and where a 2' Setback from the West property line is proposed in order to approve a Chicken Coop;
- d) Requesting an 18' Setback variance from Zoning Code Section 1252.03 (e) (1), which requires a 50' Setback from the South property line and where a 32' Setback from the South property line is proposed in order to approve a Chicken Coop; property located at 16537 North White Oaks Drive, PPN 397-22-036, zoned R1-75.

Mr. Evans stated that the Federal Fair Housing Act may play into the matter on the agenda tonight. Mr. Kolick stated that the Federal Fair Housing Act may also be involved and that the American Disabilities Act applies to service animals, which this matter doesn't fall within. Mr. Kolick advised the Board that they have the right to impose conditions to protect the neighbors if they choose to grant the variance. Mr. Rusnov questioned whether our Ordinance needs to be revised to include emotional support animals depending upon the severity of the disability. Mr. Kolick stated that the Board of Appeals is in place to vote on a variance to the Code for individual unique situations. Mr. Rusnov stated that all other chicken coop related variances requests were due to the applicant's wanting to raise chickens for eggs, not emotional support. Mr. Kolick stated that other communities have also had residents ask for chickens as emotional support animals. Mr. Evans stated that the Fair Housing Act specifically states that approval of an emotional support animal

must not impact others adversely. Mr. Baldin pointed out that the variance would stay with the property but Mr. Kolick stated they can condition the variance that if the boy moves then the chickens must leave as well. They also discussed that enforcing whether the boy lives at the house or not could be challenging.

The Board approved the minutes from the meeting on November 1, 2022.

Mr. Evans thanked Brian Roenigk for his service to the City of Strongsville and the Board of Appeals, and wished him well with his transfer to the City of Beechwood Building Department.

Mr. Kolick stated that City Council passed an Ordinance which deals with patios in a back yard and permitting patios up to 5' from the rear property line. City Council also changed the requirements for enclosed and unenclosed accessory structures, and City Council also stated that a certain percentage of pervious soil is required in the rear yard.

STRONGSVILLE BOARD OF ZONING & BUILDING CODE APPEALS
MINUTES OF MEETING
November 16, 2022

The meeting was called to order at 8:00 PM by Mr. Evans.

Present: Mr. Evans
Mr. Hayden
Mr. Rusnov
Mr. Houlé
Mr. Baldin

Also Present: Mr. Kolick, Assistant Law Director
Mr. Roenigk, Assistant Building Commissioner
Ms. Zamrzla, Recording Secretary

Mr. Evans – I would like to call this November 16, 2022 meeting of the Strongsville Board of Zoning and Building Code Appeals to order. May we have a roll call please?

ROLL CALL:	MR. EVANS	PRESENT
	MR. HOULÉ	PRESENT
	MR. HAYDEN	PRESENT
	MR. BALDIN	PRESENT
	MR. RUSNOV	PRESENT

Mr. Evans – I hereby certify that this meeting has been posted in accordance with Chapter 208 of the Strongsville Codified Ordinances. We have minutes from November 2, 2022. If there are no further comments, we will submit those as they were given to us for the record. If you are here this evening and you plan on addressing the Board, I would ask that you stand and be sworn in by our Law Director, as well as our Secretary and Building Department representative.

Mr. Kolick administered the oath to those standing.

1) **JOANNA NEMETH, OWNER**

- a) Requesting a 7,250 SF Lot Area variance from Zoning Code Section 1252.03 (e) (1), which requires a 20,000 SF Lot Area and where a 12,750 SF Lot Area is proposed in order to approve Live Poultry for four (4) chickens;

1) JOANNA NEMETH, OWNER, Cont'd

- b) Requesting a 22' Setback variance from Zoning Code Section 1252.03 (e) (1), which requires a 50' Setback from any residence and where a 28' Setback from the nearest residence is proposed in order to approve a Chicken Coop;
- c) Requesting a 48' Setback variance from Zoning Code Section 1252.03 (e) (1), which requires a 50' Setback from the West property line and where a 2' Setback from the West property line is proposed in order to approve a Chicken Coop;
- d) Requesting an 18' Setback variance from Zoning Code Section 1252.03 (e) (1), which requires a 50' Setback from the South property line and where a 32' Setback from the South property line is proposed in order to approve a Chicken Coop; property located at 16537 North White Oaks Drive, PPN 397-22-036, zoned R1-75.

Mr. Evans – Our only item on the agenda is Joanna Nemeth, property owner. Please come forward to the podium and state your name and address for the record please, and tell us why you're here.

Ms. Nemeth – My name is Joanna Overholt. My name when I bought the home was Nemeth and I haven't changed it with the County. My address is 16537 North White Oaks Drive, Strongsville.

Mr. Evans – Okay, thank you, Joanna. You presented us with a package of material, which we have all looked at and we have all visited the home either when someone was there or wasn't there. We have the information that you have submitted. If you want to you can take us through your package that you submitted. We talked in caucus about additional questions that we have. You may choose to answer those now or we can ask them again. You can state your request for the variance.

Ms. Nemeth – I wrote down what I wanted to say. I know that you all have read the packet. I don't feel it's necessary to go over that since you're familiar with it. Autism is a social disorder and a communication disorder. It affects an increasing amount of children. If they are on the spectrum it's from mild to severe. My son is rated moderate. I stay awake at night thinking of ways that I have failed him or ways that I can help him so I try to do things to create and keep my connection with him to bring him out of his shell and he's the one who had thought of chickens. We had gone to the fair the summer before and he really took a liking to them. He did. This year we went to Tractor Supply and saw some baby chicks. I checked the City of Strongsville's Code and from what I saw is that they do allow chickens. They do allow chickens. From what I saw they allow chickens from half an acre and twelve chickens but I thought we aren't going to have twelve. I didn't realize that they were not permitted for smaller properties so I was like well, we don't have twelve so I figured it would be up to the HOA. I read a copy of our bylaws and regulations and

1) JOANNA NEMETH, OWNER, Cont'd

Ms. Nemeth continues - there were no restrictions on chickens so I bought the chickens. Come to find out a few months later that my HOA established rules that don't permit chickens but I wasn't even aware of that. I didn't get a copy of that and I currently have something in with them and I'm waiting for an answer with that but they're probably going to wait to see what the City of Strongsville says. Other than that, I wrote down that Strongsville allows chickens. They allow pony's too on bigger lots. I'm not asking for a pony. A pony would not work on my lot. Reasonably thinking a pony would not make sense on my lot. Four little chickens are perfect. They really are. They have schools that integrate animal and farm therapy with their children. There is one in Broadview Heights called Insightful Minds and it's \$80,000 per year. I cannot afford that. My son could benefit from going but I can't afford that. How does someone expect me to afford a house on a bigger lot? I can't afford that too so they can have food and quality. It's an equality for financially disadvantaged children who can benefit from something like this. I brought photos of my son and I wasn't able to attach it to my packet.

Mr. Kolick – You can just give those to the Chairman here.

Mr. Evans – We will not be able to give them back. Are they copies?

Ms. Nemeth – They are copies. A little bit about my son, I told you that he is moderately autistic. He does not know how to ride a bike. He was too afraid to learn. He has very high anxiety and even socially he goes to school and he thinks everybody hates him. He will never drive a car. He doesn't leave the house except for school. He didn't go outside this summer until we got chickens. It's hard to get him out of his room. He will never be independent. He is very sensitive. He is a very sweet kid. Full of love and he loves different kinds of animals. He loves chickens. My son needs a reasonable option and four chickens are reasonable. We don't intend to have any more than that. My lot size is perfect to accommodate so I'm asking for a reasonable accommodation for my son's hardship. These chickens help him especially now that his last grandparent just died on October 27. He needs them. They have positively affected him and have helped all of us. Because something is actually helping my son I will fight for my son and his chickens. The things that we do for our kids and I never planned to do this but it's the right thing to do. Because of what my next-door neighbor did by publicly posting this notice to our HOA Facebook page in an attempt to sabotage my request for this, this is why I did not bring my son with me and brought photos instead. Do I have to fear my own neighbors? Will they taunt my son if they seen him? They shouldn't have to know my private life or my son's medical history. We shouldn't be obligated to explain it to them. We are very vulnerable and I'm hurt by my neighbor's actions. What they are doing to me, my family and now my son, I need to be able to help my son and protect him at the same time. In the future I hope that the City develops a process for reasonable accommodation while helping a protected child. It's a sadistic type of behavior. That is my request for my son and I could move it to a little bit of a different location, that's fine. We're open to that and willing to work with it. The reason why it is where it is now is because it was on the other side in the middle of the yard and the neighbor was peeking through the fence and making us uncomfortable outside

1) JOANNA NEMETH, OWNER, Cont'd

Ms. Nemeth continues - and that's why it's where it's at right now. Moving forward it would be nice to have something that would not subject children especially to harm, discrimination, bullying and abuse by their neighbor because not all people understand. That's all I wrote.

Mr. Kolick – Mr. Chairman, a couple of basic questions before we get into the other substance. How old is your son?

Ms. Nemeth – He is 17 but he has the mentality of an eight or ten-year-old.

Mr. Kolick – As I understand there are four chickens there?

Ms. Nemeth – Yes.

Mr. Kolick - Is there a reason that you feel your son needs four chickens as opposed to something less, and I'm just asking, does he need four chickens?

Ms. Nemeth - These four were ones that he was most attached to. We started with eight and gave up four of them. He couldn't part with these four and that's why we have the four. The chickens are flock animals. They do thrive in their own interrelationships. They have their own social structure. They depend on each other for food and warmth in the winter. They all have different personalities too so he really enjoys each of them and the way they interact with him and independently.

Mr. Kolick – I saw the letter from your counselor and the medical report indicating that they were helping your son. None of them specify that a certain number of chickens were required to do that. Do you feel that he needs all four of these chickens in order to help his disability?

Ms. Nemeth – We started with eight and I did lower it down to the four. The other four he wasn't really attached to but these four he is. It would destroy him.

Mr. Kolick – How long have you had the chickens and how long have you had the coop?

Ms. Nemeth – We got the chickens at the end of March this year and the coop went up, I think, in June. It was warm enough outside. They have to have feathers and a certain degree of temperature outside. At first, we had a roll away coop then we built the bigger one close to the end of summer.

Mr. Kolick – Did you contact the City about putting up the coop?

Ms. Nemeth – We did not.

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Kolick – Have you heard from your HOA about whether they are for or against the chickens being there?

Ms. Nemeth – I'm still waiting to hear a response from them after I submitted to our HOA attorney in regards to a reasonable accommodation for my son. I have not had a response from them for a couple of months. I'm trying everything I can on that end.

Mr. Kolick – Regardless of what this Board will do, it's decision does not affect what your HOA may or may not do. Maybe they will take into account what this Board does but we cannot as a Board or as a City enforce any HOA deed restrictions or covenants nor can we waive any covenants or deed restrictions. We're only looking at the Zoning requirements that we have here and so this won't affect directly whatever your HOA Board will or will not do in the future. Whatever questions our Board members have, go ahead, Mr. Chairman.

Mr. Rusnov – Your son is dependent upon these chickens, or flock animals, for emotional support, correct? Can he function outside of this property or home? Will he be fully functional ever?

Ms. Nemeth – My son will never lead an independent life. He will never be fully functional on his own. As parents we have already grounded in the idea that he will probably be living with us for as long as we can have him and I'm actually concerned about what will happen when I'm gone. I'm already talking with the high school. We're planning for his transition. He will be on Social Security and possibly working. He will never be independent.

Mr. Rusnov – In other words he will have to be in a structured environment his entire life.

Ms. Nemeth – That is correct.

Mr. Rusnov – And if I understand you correctly he is very attached to these chickens and because they're flock animals they have a pecking order.

Ms. Nemeth – There is a pecking order. It's kind of cute.

Mr. Houlé – Have you considered any other types of animals over the years? Cats or dogs or just chickens?

Ms. Nemeth – Yes, we have tried. We've had cats the entire time he's grown up. He began warming to the cat five years ago. He has a dog that we paid \$1,000 for and looked into having him trained as a service animal. We were very careful with the breed of dog. We had him trained but my son is not into this dog. He just does not like the dog. He likes chickens. It pulls him out of his shell.

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Rusnov – This dog is a Labrador retriever and the comfort dog trainer I'm familiar with trains Labrador retrievers. Very well mannered.

Mr. Baldin – Do you still have the cat or the dog?

Ms. Nemeth – Yes.

Mr. Baldin – Has your son been out among people to restaurants, or ball games or concerts? Has he gone to anything like that? Any social activities outside the home?

Ms. Nemeth – We took him this summer to Universal Studios. He enjoyed that. Before COVID he enjoyed Camp Cheerful but he doesn't want to go back to that. I do on occasion get him to go shopping with me. The school has tried sports with him but he has no interest in that. He doesn't hang out with any friends or have play dates. There is not a lot in the community for people like him to get together. They do have communication issues and they have difficulty understanding and communicating with each other. He has limited interests. He talks about the things he likes like his chickens. He talks about vacuums and he's been talking about vacuums since he was four years old. Outside of school he has no interest in the outside world. I think about how I'm failing him and how I don't need to fail him and how I can help him. I got him out of the house with me this summer with the chickens and I figured that was a monumental win.

Mr. Baldin – There must be other autistic children in the City. There is no organization in the City for him?

Ms. Nemeth – There is an autistic child who lives a couple of blocks over. My son has no interest in hanging out with others. He thinks people hate him. He thinks people don't like him. He has really high social anxiety. His teachers are great with him but he takes peoples comments wrong and it makes him anxious. He doesn't really understand people.

Mr. Baldin – Do you take him to school every day or does he take the bus?

Ms. Nemeth – He does ride a bus. They pick him up and drop him off.

Ms. Baldin – This HOA, as you heard from our legal expert here, there's not a lot the City can do but did I hear you say that you inquired and then they added something in the by laws about chickens or did they have it in there before you inquired?

Ms. Nemeth – I did not see anything about chickens in their bylaws. They published their rules and regulations after I moved into the community. I was unaware about the update and never got a copy of them until recently. I saw that these rules were available and I understand that the City has nothing to do with that. I will fight that privately if I have to.

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Baldin – So, they added that after you asked about it. Thank you.

Mr. Evans – Ms. Nemeth, the circumstance of autism is a very individualized situation. There are very few autism situations that are the same. We recognize that, as a Board, our purpose is not to sit here and go through the history of your son and autism. Ours is to look at whether a reasonable accommodation can be made without impacting those people that are around. The Fair Housing Act and the way it was structured was designed to give people the opportunity to be able to exist in situations where their special needs have been considered but the Fair Housing Act and in several recent cases and I did bring one in particular to the attention of Mr. Kolick to make sure that I was reading the court decision correctly does take into consideration whether reasonable accommodation has an adverse impact on people around them. Even though the Fair Housing Act is designed to protect it does still have qualifiers that are in there, as Mr. Kolick alluded to, are things that we have to consider either by restriction or by not being able to grant a variance when in our estimation that reasonable accommodation doesn't allow for everyone else around to be less than adversely impacted. So, as we talk this evening I apologize that anything related to this has been out on Facebook or the internet. That should never be the case but this is a public forum and unfortunately these things often become public fodder, which is not appropriate but oftentimes does happen. For our Board, the structure of reasonable accommodation is what we will look at this evening and take into account. Mr. Kolick, is there anything further that we need to ask before we open the public hearing.

Mr. Kolick – No, I think that you've addressed the disability, the help that the chickens may provide for the individual with the disability. The only other question that I might have before we open up to the public, have you had any complaints about the chickens regarding smell, noise, vermin, rodents, hawks or anything like that from any neighbors?

Ms. Nemeth – The only complaint that we have had on the chickens was when I reported my neighbor's dog to the animal warden. They were upset and told the animal warden that I had chickens. That was the only complaint. The neighbors right next to the coop adore them

Mr. Rusnov – Ma'am, that would be the neighbor to the left that filed the complaint? What about the neighbor to the right that is closest to the chicken coop? Was there any positive or negative information or comments from those people?

Ms. Nemeth – She said that she submitted an email online saying that she was favorable towards the chickens and she responded to the neighbors Facebook post telling him to get a life and if it helps my son to let it be.

Mr. Rusnov – Where did this email go?

Ms. Nemeth – She said she emailed it through the County website.

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Rusnov – Who was it sent to?

Ms. Nemeth – No, it was to the City.

Mr. Evans – The only other question is you mentioned the program in Broadview Heights. I looked into that and it's not \$80,000 a year. That's what funding for it is for the City. Broadview Heights is not the only community that has programs. Strongsville is no longer a rural community but there are farms and places where we have chickens around the community. Have you looked into any of the places that may already have chickens in terms of getting your son to visit the chickens at a location other than having them at the house?

Ms. Nemeth – We've gone to the fairs when they're in town but right now being connected with...we have worked with the County Board of MMRD already but now we're working more closely with them since he's transitioning out of high school for work opportunities. We didn't start this sooner because of COVID and my son didn't understand a lot of things. So, now that society is back to normal they do have farms and things they can work on and I can check to see if they have things that he can volunteer. There used to be STEPS. It was right by his school.

Mr. Kolick – For Kathy, have we received any emails either for or against this?

Ms. Zamrzla – No.

Mr. Kolick – Thank you.

Mr. Baldin – Why did you call the animal warden on your neighbor's dog?

Ms. Nemeth – His dog was trespassing and causing damage on our property. We noticed the damage that their dog caused earlier and after talking with my neighbors they have failed to contain their dog for the most part and even most recently as November 4th, the dog was on my property again. He gets loose.

Mr. Baldin – Can he get into your back yard?

Ms. Nemeth – No, but all through my front yard and he used to be chained long enough that he would be right in front of my house and anybody walking to my door, including myself, the dog would bark at me coming into my own home.

Mr. Baldin – Thank you.

Mr. Rusnov – This whole situation was sparked by a neighbor disagreement.

1) JOANNA NEMETH, OWNER, Cont'd

Ms. Nemeth – Correct.

Mr. Evans – Anything else?

Mr. Rusnov – No.

Mr. Evans – All right. So, if there's nothing else that you need to provide right now again, why don't you have a seat and we will conduct the public hearing part of this and we'll come back to you for comments.

Ms. Nemeth – Thank you.

Mr. Evans – In our public hearing format, is there anyone who wishes to speak in favor of granting of the variances? Is there anyone who wishes to speak against the granting of the variances? The gentlemen on the end, you had your hand up first. Please come to the microphone and state your name and address for the record.

Mr. Kolick – Mr. Chairman, it also will be helpful if the people tell us where they reside in relation to this home as well.

Mr. Evans – Thank you.

Mr. Nicole – My name is Philip Nicole. I live at 17183 Penny Pines Circle in Strongsville, which is on the corner of Penny Pines and Timberline, which is the next street south of White Oak. Our property is approximately 150 yards from the property on White Oak. Our initial concern when we read the notice was that there would be roosters. As I understand it, that's not the case but if the poultry is against the HOA rules and that handbook was written as of June 2016, of which I have a copy here. My question besides it being not allowed by the HOA, why does the chicken coop have to be the size that it needs a variance for only four chickens?

Mr. Kolick – Mr. Chairman, I may be able to answer that. First of all, we have a minimum lot size requirement that they don't meet. That is why they need the variance. The second thing is they don't meet the side yard setbacks for the coop under the Zoning Code. That is why this Board was established, to determine individual circumstances to determine whether or not the circumstances would merit a variance or waiver from those conditions.

Mr. Nicole – But my question is I understand the size of the lot is such that they should not be building a chicken coop.

Mr. Evans – Correct.

1) JOANNA NEMETH, OWNER, Cont'd

Ms. Nicole – But can there not be a chicken coop built within the confines so they don't need the setback variances?

Mr. Evans – No, the reason is that the lot size that permits chickens is much larger in total square footage or acreage from the lot which the applicant lives on. You could have a tiny chicken coop and it's still not going to meet the setback requirements for a residential lot like that. That's why we exist to take a look at that. Up and down Pearl Road we have lots that don't meet the minimum requirements as they have been changed over the years. We're in a position that we can look at it and make decisions based on what the requirements are. As far as the rules for the HOA, as Mr. Kolick and Mr. Baldin both said, as a Board we can enforce City Ordinances and that is our guide. We do not have control over HOA's whether or not it's bylaws or covenants and restrictions or operating rules the HOA adopted. We oftentimes look for a HOA to have input on variances but it's not required that we have input from an HOA in order to make a decision on a variance.

Mr. Nicole – That is our objection that had already been stated, such as the smells and the vermin and et cetera.

Mr. Baldin – You live 150 yards away. Have you noticed any vermin or odors or loud noises from these chickens?

Mr. Nicole – No.

Mr. Evans – Thank you, Mr. Nicole. As we call up other individuals you may comment on items that you agree with but please let's not be repetitive. Is there anyone else who wishes to speak against the granting of the variances? Sir, we will start with your name and address and where you live in relation to the applicant property. I apologize because the notices for these meetings list items that are being considered and it does not have the type of information to give you the ability to understand all of the ins and outs of the requests being made. That's the format we do. You can always go to the Building Department to get more information. Sir, your name and address?

Mr. Kovach – My name is John Kovach. My wife's name is Judy and we've lived on that street for 44 years.

Mr. Evans – We need the address Mr. Kovach.

Mr. Kovach – We've seen this street go from a rough street to a paved street to sidewalks with nice homes. Forty-four years and I've seen a lot of people come and a lot of families go. A lot of animals come and a lot of animals go. Dogs, cats primarily. The purpose of my pitch is...

Ms. Baldin – Sir, you have not given us your address. We need your address.

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Kovach – 16549 North White Oaks Drive.

Mr. Baldin – Thank you.

Mr. Evans – Thank you.

Mr. Kovach – The HOA if you're interested and really wanted to find out an answer, June 2016 HOA bulletin. I'm going to read to you very slowly, no pets, no animals, livestock, pigeons or poultry of any kind shall be raised, bred or kept on any lot of parcel or common area. The Strongsville version it says 20,000 square feet. I appreciate her problem but we're not here to talk about her problem. I'm not here to talk about her problem. I'm talking about all the people in the Deerfield development. An exception like this here would lead to nothing but a flood of other exceptions. We have a HOA. She could have read the laws. I'm sure she is computer literate and could have brought this to us. Saying that nobody got in contact with me is an excuse. Your Ordinance is signed by Mayor Perciak and it also mentions about poultry and it also mentions 20,000 square feet. I'm not for any variance of any kind. I appreciate her problem and I appreciate that she should look into something like, in my family, the kids got gerbils. The kids took care of them. She should also look at a fish tank, an aquarium. There are other things she can do. To put chickens out there, which would be a nuisance to the neighborhood, in my opinion. She says no. In Strongsville we have field mice, squirrels, voles that dig up your lawn and moles. There are tons of deer. Our area back there is very wooded and the deer are back there constantly. Where is all the culling? I see more deer than ever. You have eagles flying around, tons of birds flying around and leaving their droppings everywhere. This is something we can't control but this we can control. That is all I have to say, sir.

Mr. Evans – Thank you, Mr. Kovach. Is there anyone else who wishes to speak against the granting of the variance? Come on up.

Mr. Baldin – Did I hear that gentleman correctly as saying that their HOA says anybody in the development can have no pets whatsoever? No cats, no dogs, no rabbits, no nothing. There are no animals in the neighborhood?

Mr. Evans – That's what he read.

Mr. Baldin – Apparently there is a dog next door. Come on up, ma'am.

Mr. Evans – We will need your name and address for the record.

Ms. Rickey – My name is Melissa Rickey. My husband and I live at 16550 South White Oaks Drive and in relation to the applicant, our house sits directly behind her. When my husband and I received the letter from the City we first did not realize that the neighbor had a chicken coop. We

1) JOANNA NEMETH, OWNER, Cont'd

Ms. Rickey continues - don't want chickens in our neighborhood. Listening to Joanna I feel passion for her as a parent and her situation; however, knowing that the Board to the HOA does not permit chickens, there are other opportunities for her to seek other ways to help her son by either moving to a property that allows chickens or getting some other sort of emotional support animal. My husband and I are concerned. We have a wooded back yard. We are concerned about hawks building nests in our trees or flying over our house to get to the chickens. We try to keep up our yard the best that we can but we don't want to be dive bombed by hawks when we're in our back yard. Our neighbors behind us also have a fence and we have a split rail fence. We do not want raccoons, possums, other rodents digging holes on our side of the fence to get under the fence to get the chickens. Those are pretty much our biggest concerns but we are not in favor of the chickens.

Mr. Evans – Okay, Mrs. Rickey, I'll ask the question. If the chickens have been there since March and you didn't know they were there, you have not seen hawks circling or rodents digging under your fence?

Ms. Rickey - We have seen hawks.

Mr. Rusnov – The hawk population has made a comeback since DDT was outlawed. That's what was destroying them. I have about seven hawks by my house and I back up to the Metro Parks.

Mr. Evans – Anything else?

Mr. Baldin – So, the chickens did not annoy you until you got the letter?

Ms. Rickey – We didn't know there were chickens until we got the letter.

Mr. Evans – Thank you, Ms. Rickey. Is there anyone else who wishes to speak? If you will come forward please and we will, again, need your name and address for the record.

Ms. Nicole – My name is Joyce Nicole and I live at 17183 Penny Pines Circle. I would like to share with the Board the rules for Deerfield Lake HOA, which states...

Mr. Rusnov – Ma'am, I don't think we can consider the HOA's rules. That's not our purview. We are here to rule on the variance.

Ms. Nicole - ...it says there are no poultry of any kind.

Mr. Rusnov – Like Mr. Evans said, we are here to operate under the City guidelines, not the HOA guidelines. That's a totally separate item for your HOA to take or not to take action upon.

1) JOANNA NEMETH, OWNER, Cont'd

Ms. Nicole – I have indeed spoken with the HOA and they informed me that they have turned the issue over to legal counsel and it is presently with the legal counsel.

Mr. Rusnov – That is the point that I was trying to make. You have that opportunity and Mr. Evans when he closes will make a statement that this will also go the City Council for full review. They have the authority to overrule us or agree with us.

Ms. Nicole – Okay.

Mr. Rusnov – All your legal rights are being protected, especially if you're in litigation at this point in time. Your HOA is the one that you really want to be talking to.

Ms. Nicole – I spoke with them several times and they told me they have had communication with the homeowner and as a result they have now turned it over to legal counsel. They didn't want to go into any detail.

Mr. Rusnov – You've answered your own question then.

Ms. Nicole – They did want it to let it be known that no plans were ever submitted to our HOA and no permit was ever granted to build the structure on the property and the property is approximately half the size that it should be and one of the variances that says on the West side it is supposed to be 50' and she is looking for a total of 48' difference. So, instead of 50' it's going down to 2'. That is considerable. The other point that I would like to make is that the other variances pretty much go 50' to approximately half of what is required. The other one going down to about a third of what is required. So, I would say that the one variance is pretty much zero and then the others are half and a third, and I think it's too large of variances to allow in a subdivision. There are areas around that someone can live and handle the chickens and doesn't even need a variance. That is my statement.

Mr. Rusnov – Thank you.

Mr. Evans – Thank you, Ms. Nicole. Questions? Is there anyone else who wishes to speak against the granting of the variances? Sir, if you will come forward we will need your name and address please.

Mr. Connelly – Anthony Connelly and I live at 17142 South Red Rock Drive. I'm not close to this person's residence. I'm here because I don't want to see a precedent set and how far these variances get allowed. It doesn't follow everyone else in the City. We want to be careful what we approve because it's going to continue and waterfall from there. That's my fear. Thank you.

Mr. Rusnov – We consider that almost at every meeting.

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Connelly – I'm sure you do. Thank you.

Mr. Evans – Thank you, Mr. Connelly. Is there anyone else who wishes to speak against the granting of the variance? Hearing none and seeing none...Ms. Nicole, if you'll come back to the podium, please.

Ms. Nicole – When I spoke with our neighbors another concern was if this variance would be granted that it affects our property values and the reason for that is one of the neighbors wanting to sell their home and it's reduced because of a chicken coop and so the fact that someone else goes to sell their home at that lower price then I choose to put my home up for sale, we all know that realtors do comparison values and so then that indeed affects the value of my home wherever it is in Deerfield Lake.

Mr. Evans – Thank you, Ms. Nicole.

Mr. Rusnov – I happen to be a real estate appraiser. Proving a decrease in value for an entire subdivision because of a chicken coop is almost impossible because you have to be able to have matched paired sales. This house has no chicken coop and this one did and this one sold for more or less. You can't prove it. If you stand at the curb, I looked at the house, it's fenced in. I didn't even know there were chickens back there. It looked like a play house where the chicken coop is. I honestly don't think that you'll suffer any economic hardships due to a chicken coop.

Ms. Nicole – I spoke to a realtor and that is what she told me.

Mr. Rusnov – Give me the realtors name and I will talk with her because she's not a licensed state appraiser. She is a licensed state realtor. Totally different ball game. You have to have 2,000 hours of actual training. You have to have course work, I had to serve a five years apprenticeship. I had to take college level classes just to be an apprentice. I've been doing this since 1969. I've seen a few houses. I would normally consider looking at buildings to see if they cause any type of economic hardship. I couldn't even tell this chicken coop was back there when I pulled up. I had to ring the door bell to make sure I was at the right house.

Ms. Nicole – The variances make a bigger difference. The variances will affect the property.

Mr. Rusnov – That I don't know.

Mr. Evans – Ms. Nicole, that is a personal opinion. You're welcome to that and that's why we have the public hearings. What Mr. Rusnov told you is that his years of experience as a senior commercial and residential real estate appraiser tell him otherwise. Thank you for expressing your opinion but since you're not an appraiser or a realtor it does qualify as being your opinion and we take that into consideration.

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Rusnov – We respect your opinion.

Mr. Evans – Thank you.

Ms. Nicole – Thank you.

Mr. Evans – All right. Mr. Kovach, if you would make it brief. You have already been to the podium once.

Mr. Kovach – I question Mr. John Rusnov. You're a real estate agent?

Mr. Rusnov – I am a real estate appraiser, licensed by the State of Ohio.

Mr. Kovach – If a real estate agent went into that house and wanted to sell that house what would be the first thing that he would tell those people if he saw the chicken coop back there?

Mr. Rusnov – I don't know. I'm not a real estate agent.

Mr. Kovach – In my opinion he would tell them to get rid of the chicken coop.

Mr. Rusnov – That's your opinion. I couldn't even tell it was back there.

Mr. Kovach – I'm not questioning that. You should have walked back there and looked.

Mr. Rusnov – I did.

Ms. Kovach – Okay, but they broke the law on number one, they built a coop. They didn't get a permit. I have neighbors that tried to get a 2' extension to their patio and it gets denied by the Building Department.

Mr. Rusnov – I have nothing to do with that. Take it up with the Building Department.

Mr. Kovach – This is part of the Building Department. If I had a house that was next door to them and tried to put in a driveway, or roof or siding or a deck and I wanted to sell the house and the person that came to look at my house and a person sees the chicken coop next door, do you think I would sell my house that quick? No, I would not. Thank you, sir.

Mr. Rusnov – Thank you for your opinion, sir.

Mr. Evans – All right. Is there anyone else that wishes to speak against the variances? Please come forward, sir, and we will need your name and address.

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Desiero – My name is Michael Desiero and I live at 17200 Misty Lake Drive. I share a property line with Joanna Nemeth Overholt. I would be against like what Mr. Connelly said with the variances and if we let this one go it would let more go and I would not like to see that happen. It starts with chickens and then ponies and donkeys or anything like that. I bought my house and went to the HOA. I read through all the bylaws before I did any kind of improvements to my home. If I have any questions about what I'm allowed to own on my property, they are very cut and dry as Mr. Kovach already pointed out. I hate to see this to where someone buys chickens or builds a coop and then asks for permission afterwards. It's like a loophole to be able to get in with said animal. That's all I have to say.

Mr. Evans – Is there anyone else who wishes to speak against the granting of the variances? Hearing none and seeing none I will declare the Public Hearing closed.

Mr. Kolick – Mr. Chairman, why don't you ask the applicant to come back up if she wants to address anything that was said by any of the neighbors. If she doesn't want to, that's okay too, but since she filed the application she should have the right to come back up and talk.

Mr. Evans – Thank you.

Ms. Nemeth – So, Ms. Overholt, you have heard some of the comments that have been made again. I'll go back to saying that our decision is based on reasonable accommodation and whether or not that reasonable accommodation will impact those in the area. As Mr. Kolick said, we give you an opportunity to summarize your situation.

Ms. Nemeth – I just wanted to say I'm sorry to hear that this has upset a lot of the neighbors. I can understand. I just would wish that they would be able to understand my son and what we go through as a family and me as a parent to see that child of mine smile and he barely ever smiles. I wish that they could understand and I do understand that they can't. In regards to the structure considering that it's movable, it's a temporary structure. It wasn't built on a concrete pad or it doesn't have footers that go into the ground. I actually thought about putting wheels on it to move it around the yard. That's why I didn't apply for a permit because it was temporary and movable. I honestly wasn't sure my son was going to take to the chickens but then I finally built it when I knew that he did. Also, I just wanted to say the other person made a comment about being a real estate agent. I have been a real estate for 20 years. My next-door neighbors are not concerned about it. I've sold houses with chicken coops. I've sold houses without chicken coops. I think ours is cute. I'm going to be putting Christmas lights up to decorate. That was the plan. Of course, too, if we do move, it comes with us. It wouldn't transfer with the property. The base of it is contractor sand. Easy clean up if you put grass over it. It doesn't peek over the fence. No one can see it over the fence. That's all I wanted to say.

Mr. Rusnov – Ma'am, you're okay with moving it to somewhere else on the lot?

1) JOANNA NEMETH, OWNER, Cont'd

Ms. Nemeth – If you recommend that we move it somewhere else we are willing to do that.

Mr. Hayden – Ms. Chairman, from the Building Department, do we have dates of complaints to this point?

Mr. Roenigk – Yes, sir, we do. As the owner stated, the chickens were bought in March and the coop was put in in early June. I personally received the complaint from our animal control officer on August 18, 2022 and as I have been listening to the comments, just so the Board knows, should this have been a 20,000 square foot lot as required and the owner had the twelve chickens as allowed that would equal 1,666 square feet per chicken. On this lot that is 12, 750 square feet, having four chickens, that is 3,187 square feet per chicken to give you a perspective of the lot.

Mr. Evans – That is helpful from the standpoint of what City Council may have looked at when they passed the minimum lot size.

Mr. Roenigk – I wasn't around then but I thought that's what they would have gone by.

Mr. Kolick – Mr. Chairman, maybe for Brian, if this chicken coop...you're going 2' off one property line, if this was in the center of the lot, what would we be looking at for the variances because these are substantial numbers for variances as they stand now.

Mr. Roenigk – Ma'am, do you know the dimensions of the chicken coop?

Ms. Evans – Four by six, that would be my guess.

Mr. Baldin – Four by six is close.

Mr. Kolick – Mr. Chairman, maybe the applicant knows the dimensions. Can you come up and tell us?

Ms. Nemeth – The one part is 4' by 6' and then the coop, which comes out like a step 2 play house for kids but it's for chickens. It's that type of build. That's about 3' by 3'.

Mr. Roenigk – So, 34' if it was placed in the center from the property lines.

Mr. Evans – And the rear yard setback would be the same because of the... well yes, and no.

Mr. Kolick – Is it 28' from their home, Brian, on item (b) or is it from a different residence?

Mr. Roenigk – From the applicant's home.

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Evans – Any other questions from Board members?

Mr. Baldin – Mr. Chairman, before we put this to a vote I would like to have a private caucus with the Board.

Mr. Kolick – Well, you really can't do that anymore unfortunately. I know we have done that in the past but I think you can discuss here in an open forum.

Mr. Baldin – Okay, my discussion would be any type of recommendations or conditions that we can put on this before we vote.

Mr. Kolick – Well, as I noted, you can limit the number of chickens. It doesn't have to be four. It can be less. I would suggest that you condition it on maintaining only while the individual who is disabled, I believe his name is Leo Nemeth, is living on the property and requires the chickens for emotional support. And you can also change the variance requests to more centered on the lot and leave item (b) where it's at. I don't think you want to move it back towards the rear lot and be more likely to interfere with neighbors. You can change the other two, because they are substantial variances. So, those are the conditions that you would be looking at.

Mr. Rusnov – So, in other words, Mr. Kolick, if we condition upon the young child sent to school but leaves the property, the variances at time ceases so therefore the variances would not follow the property forever like other variances.

Mr. Kolick – That is correct because you are only doing it as a reasonable accommodation for someone who you believe is disabled and this variance would benefit him.

Mr. Rusnov – I would make a motion that we put those in there.

Mr. Kolick – Do you want to change (c) and (d) because they're only 2' off the property line?

Mr. Rusnov – Starting with (a) the property would be limited to four chickens and no more, no roosters, that would be part (a) and the rest of them, you figure out where they go.

Mr. Kolick – Brian, if we centered this on the lot what would the two setback requirements be?

Mr. Roenigk – Thirty-four feet.

Mr. Kolick – So, (b) would be requesting 16' you're saying and (d) would be requesting 16' because if they are 34' from the side property lines...

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Rusnov – Let me stop you, one of the concerns of the resident's was no odors and the property of the chicken coop has to be maintained so there is no odor and no rooster. That's if we grant this. I'll read (a)...

Mr. Kolick – Before we do that I can read all of the conditions but before we do that we need the applicant to come forward because I can change the conditions on it but I can't change the distance on it without the consent of the property owner because she has the right to request whatever she wants. Would you be adverse, Ms. Overholt on moving it to the center of the lot where it would need a 16' variance from each side line?

Ms. Nemeth – I wouldn't be opposed to it. I prefer to leave it where it is because I know the neighbor's bordering adore the chickens but if it's a recommendation from the City, we will do it.

Mr. Kolick – You'll be agreeable with it? We have to look at the neighbor that's there now but the next one that may want to come in but if you're not opposed to doing it, Mr. Chairman, I suggest that would make more sense to move it to the center of the lot. The one condition would be 16' setback variance from the 50' setback from the sidelines. You would limit to no more than four chickens with no roosters, that they could maintain the chicken coop only while the individual who is living at the property is disabled and requires the chickens for emotional support, it must be maintained in an orderly manner with no smells or odors. That's key to me. I didn't hear anyone complain tonight that there were smells or odors including immediate neighbors. I understand there could be future complaints about that. So, I think that those would be appropriate conditions on that. We don't need the applicant's consent for the conditions but we do need the consent for the distance though. I would add one more to it and that would be maintaining the fence to ensure that there is no intrusion by outside influences like animals or anything else in that nature.

Mr. Evans – I think we do want to limit the size of the chicken coop as well, either to what is existing of 4' by 6'.

Mr. Rusnov – Four feet by 6'.

Mr. Evans – I know that adds to it but I think that if we were to grant it that it needs to include those.

Ms. Nemeth – It's two pieces so is that the two pieces together or just one?

Mr. Rusnov – Are they stackable or are they alongside of each other?

Ms. Nemeth – We joined them together. One is the plastic coop and the other part we built the enclosure.

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Rusnov – So, the total size would be 4' by 6'. Is that doable?

Ms. Evans – Your indication was that the coop is 4' by 6' and the adjoining play structure is 3' by 3'?

Ms. Nemeth – Correct, they sleep in the 3' by 3' and when they come out during the day they'll come out into the run.

Mr. Baldin - But the overall size is 4' by 6'?

Ms. Nemeth – No, it's the 3' plus the 6'.

Mr. Kolick – (to persons in the audience) Please sir, we can't pick up your comments. Let us work this out. If it's 9' by 9' it's going to change your setback requirements then, Brian.

Ms. Nemeth – Nine feet by 3' or 9' by 4'. Something like that. It's about 4' wide.

Mr. Kolick – Four feet by 6' and 3' by 3' that would be 7' by 9', right? What is the square footage, Brian?

Ms. Roenigk – Nine feet by 4' is thirty-six square feet.

Mr. Evans – The adjoining is 3' by 3' with is adding onto the 4' side which makes it 9' by 4'.

Mr. Kolick – So, a coop not to exceed 4' by 4'?

Mr. Roenigk – Correct.

Mr. Kolick – How does that change the...

Mr. Roenigk – Is this going to be in the center of the lot or are we going to be 20'?

Mr. Kolick – Let's put it in the center of lot so it has less impact on both sides.

Mr. Roenigk – Okay, we were talking 48' from the rear property line.

Mr. Kolick – She's okay from the rear property line now, right? It's only the 2' side yard setbacks?

Mr. Evans – The rear yard setback currently is (b).

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Kolick – (b) is the setback from the residence, not the side yard or rear yard. That's the distance to their own residence so (b) would stay the way it is because they're aren't coming any closer to their residence. They're just moving it sideways.

Mr. Rusnov – Laterally on the lot.

Mr. Kolick – Correct.

Mr. Roenigk - Okay, so it's 33' from the rear property line and 33' from the house.

Mr. Kolick – So, what would (c) be then?

Mr. Roenigk – The west property line?

Mr. Evans – (d) would be the rear.

Mr. Rusnov – If you're facing the house that is the house to the right.

Mr. Kolick – What would (c) be? The side yard setback.

Mr. Roenigk – (c) is going to be 34'. Both sides lot distances are 34'.

Mr. Evans – Thirty-four feet where 50' is required.

Mr. Roenigk – Correct. For both sides. The rear is going to be 33' and the house is going to be 33'.

Mr. Evans – Centering that in the yard from their house to the back of the lot. Wouldn't you want to push it closer to their house so they maintain a further distance from the house behind?

Mr. Kolick – Okay, so that would move it how much closer to their house?

Mr. Evans – I would think that 20' is a requirement from the building so we shouldn't be going closer than that.

Mr. Kolick – Okay, we have a 50' requirement so if they're going within 20' of the house....

Mr. Evans – So, that is a 9' distance there.

Mr. Kolick – Brian, (a) is going to remain where it is, so what is (b)? We moved it closer to the house and gave it the full 50' rear yard setback, Ken? (a) is what it is, (b) has to be changed to get

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Kolick continues - the full rear yard setback so there's a full distance to the rear property line to protect the neighbor in the rear. So, how far are they from the house?

Mr. Evans – That's if you're splitting the distance but we're saying that if you're 20' from the house...

Mr. Roenigk – No, it has to be 50' from the house.

Mr. Kolick – Fifty feet off the rear property line, how close is that to the house?

Mr. Roenigk – Oh, I get it, okay.

Mr. Baldin – I might be missing something. Why are we using the word residence instead of property line? Is that something new? I've been on this Board for 30 years.

Mr. Kolick – No, different requirements have different sections. The poultry section has a requirement distance to the residence as well as distances to property lines. That is why.

Mr. Baldin – Okay.

Mr. Kolick – We've had that with other things. Remember, we have sheds that can't be within 20' of a residence for separation purposes for fire?

Mr. Baldin – So, we're talking about her particular residence?

Mr. Kolick – Her residence. We don't want to move it further from her residence and closer to neighbors.

Mr. Roenigk – It's 17' Mr. Kolick.

Mr. Kolick – So, (b) would be a 17' setback?

Mr. Evans – A 17' variance, right?

Mr. Roenigk – It would be minus 17'.

Mr. Evans – Okay, so it's 33'.

Mr. Kolick – So, (b) would be a 33' setback variance requiring 50' so she is 17'.

Mr. Roenigk – Correct.

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Kolick – What we're saying, Ms. Nemeth, is we're pushing the building closer to your house.

Ms. Nemeth – I can't visualize it from the top of my head.

Mr. Evans – That moves it away from the rear property line closer to your house.

Mr. Kolick – Okay, where are we on the side yard setbacks?

Mr. Roenigk – Thirty-four feet and 16' on both of them.

Mr. Kolick – So, (b) would be a 16' setback variance which requires 50' and they're proposing 34' and the same thing with (d)?

Mr. Roenigk – Yes, correct.

Mr. Kolick – Okay, I think we have the numbers correct then. Whatever Board member is going to read this, why don't you read this and I'll attach the conditions to it.

Mr. Rusnov – Where do you want the conditions to attach?

Mr. Kolick – At the end. Put all the conditions at the end of all the variances. Read the whole motion as it is with the numbers and then I'll add the conditions at the end. Do you have the numbers?

Mr. Rusnov – I'll read the all four of these sections or you know what, I'll read the first one. I'll take (a), he can read (b)...

Mr. Hayden – I'll just read the whole thing.

Mr. Evans – Thank you.

Mr. Hayden – Mr. Chairman requesting a 7,250 SF Lot Area variance from Zoning Code Section 1252.03 (e) (1), which requires a 20,000 SF Lot Area and where a 12,750 SF Lot Area is proposed in order to approve Live Poultry for four (4) chickens and (b) requesting a 33' Setback variance from Zoning Code Section 1252.03 (e) (1), which requires a 50' Setback from any residence and where a 17' Setback from the nearest residence is proposed in order to approve a Chicken Coop; (c) requesting a 16' Setback variance from Zoning Code Section 1252.03 (e) (1), which requires a 50' Setback from the West property line and where a 34' Setback from the West property line is proposed in order to approve a Chicken Coop; d) requesting an 16' Setback variance from Zoning Code Section 1252.03 (e) (1), which requires a 50' Setback from the South property line and where a 34' Setback from the South property line is proposed in order to approve a Chicken Coop; subject

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Hayden continues - to the following conditions 1) the chicken coop is limited to 4' x 9' maximum size; 2) the fence that surrounds the rear yard must be properly maintained to avoid any predatory animals entering through openings or chickens getting out; 3) no more than four chickens are permitted; 4) the chicken coop and the chickens must be maintained to eliminate any odors or harm to neighboring properties; 5) the chicken food has to be separate and in sealed containers; 6) no roosters are permitted on the property; 7) the chicken coop and chickens must be removed from the property when the disabled occupant that is using the chickens as emotional support animals moves from the property or no longer requires the chickens for emotional support. Those conditions fit everything that we talked about here. To the applicant, do you understand everything here?

Ms. Nemeth – Yes, I do.

Mr. Hayden – Mr. Chairman, this property is located at 16537 North White Oaks Drive, PPN 397-22-036, zoned R1-75.

Mr. Houlé – Second.

Mr. Evans – Thank you, Mr. Hayden, for the motion and Mr. Houlé for the second. Do you need any discussion on this?

Mr. Rusnov – No.

Mr. Baldin – I don't think so.

Mr. Evans – Okay, can we have a roll call please?

ROLL CALL: MR. RUSNOV – YES

MR. HOULÉ – NO

MR. EVANS – NO

MR. HAYDEN – YES

MR. BALDIN – NO

Mr. Kolick – It's been denied.

Mr. Evans – So, the variance has been denied by this Board. The Building Department will work with you on a disposition for the chicken coop. Obviously, at this point, it would be advisable to

1) JOANNA NEMETH, OWNER, Cont'd

Mr. Evans continues - see if a home can be found for the chickens in some type of a farm or whatever where they could be visited or whatever but at this point the variance tonight has been denied by this Board.

Mr. Kolick – The City will try to work with you to cause the least problems with your son with the loss of the chickens. Thank you.

Mr. Evans – Thank you, Mr. Kolick. Is there any other business to come before the Board? Mr. Kolick, we will need to ask for you to provide Findings of Fact and Conclusions of Law.

Mr. Kolick – Okay. Will do so.

Mr. Evans – If there is no other business to come before this Board, we are adjourned.

<u>Signature on File</u>	<u>Signature on File</u>	<u>December 7, 2022</u>
Mr. Evans, Chairman	Kathy Zamrzla, Secretary	Approval date