

Canal Winchester

*Town Hall
10 North High Street
Canal Winchester, OH 43110*



Meeting Minutes - FINAL

September 4, 2018

6:30 PM

PUBLIC HEARING

City Council

*Bruce Jarvis – President
Mike Walker – Vice President
Jill Amos
Will Bennett
Bob Clark
Mike Coolman
Patrick Lynch*

A. Call To Order

Jarvis called the meeting to order at 6:30 p.m.

B. Roll Call

Present 7 – Amos, Bennett, Clark, Coolman, Jarvis, Lynch, Walker

C. Purpose of Public Hearing**APL-18-001**

Notice Of Appeal Regarding The Denial Of Variance Application VA-18-009 By Planning And Zoning Commission To Approve The Keeping Of Chickens On A Residentially Zoned Property Under One (1) Acre At 42 Elizabeth Street

Variance Appeal Email, VA-18-009 Staff Report, VA-18-009 Application, Findings of Fact and Conclusions of Law

Jarvis: the purpose of this public hearing is to discuss the variance application APL-18-001; we were provided in our packets for the public hearing some additional background material; variance appeal email from the applicant; also the planning and zoning decision on the variance request; so this evening we are hearing an appeal because that variance request was denied by planning and zoning back in July, I believe it was;

D. Staff Report

Haire: this appeal is in regards to a variance application that was filed for 42 Elizabeth Street; 42 Elizabeth Street is zoned R3 which is low density residential in our zoning code; the subject property is on the west side of Elizabeth Street; it consists of two lots so it's larger than most residential lots; it's lot ten and eleven of the Dye addition; it's a total of .38 acres; we received a complaint on June 1st 2018 in regards to chickens being kept on the property; we investigated that complaint and contacted the applicant on June 4th; in regards to the need to either eliminate the chickens because they're not permitted by code or file for a variance; they chose to file for the variance; that variance was heard at the July 9th meeting of planning and zoning commission; our code which was passed last year requires a minimum of one acre to keep chickens on a residentially zoned property; since this is less than one acre that's the reason the variance was requested; so planning and zoning met to consider the variance application on July 9th and they voted to deny the variance; two neighbors came to speak against granting the variance; Mrs Bolin who is a homeowner that doesn't live in the home but is a homeowner to an adjacent property and also a resident who is a homeowner to the rear of the property spoke against granting the variance at that meeting; Mr. Jerry Stoffer; Jarvis: Mr. Haire I did not see the details of those objections by the neighbors; can you characterize the nature they had a problem with; Haire: according to the minutes of that meeting on July 9th Mrs. bolin stated she owns property adjacent to the applicant; she filed an online complaint on behalf of her renters who had complained to her regarding the noise of the chickens; she also said there are issues with the raccoons in that area; she had visited the property and saw the raccoons that she thought may have been attracted by the chickens; and she thought this was inviting nuisance in by keeping chickens there; she also was familiar with the discussion regarding the ordinance that was passed last year and didn't understand why we would consider a variance after all the debate over the size of the lots; Mr. Stoffer said there are known issues with chickens including noise, smell, small rodents and reduction in property values; this instance is causing all of them not to mention salmonella; 2017 was a record year for salmonella primarily caused by backyard chickens; Mr. Stoffer stated he would appreciate not having back yard chickens on a property adjacent to his; Mr. Jarvis I would like to note that Mr. Christensen the chairman of planning and zoning is also here is you have any questions of the planning

and zoning commission; Jarvis: Mr. Christensen would you mind leading off from a perspective of planning and zoning;

E. Public Comments - Five Minute Limit Per Person

Bill Christensen, 70 Flintlock Way: basically as Mr. Haire said we had two citizens who talked against it and you heard what they said; basically that has a lot to do with our decision; the other thing is this is the first variance asked of us with a fairly new ordinance; and we sort of wanted to see what tolerance people have on it too; we wanted to see where you stand on a fairly new ordinance; that was basically our two discussion items on this so that's why we turned it down; Jarvis: I noted that two of the planning and zoning members have descended on the decision to deny the variance; can you share with us the rationale; Christensen: actually they had no problem with having chickens on the smaller lots; they felt it was acceptable on smaller lots; at least the one does; Lynch: Mr. Christensen number one is there an HOA and number two is the HOA okay with chickens in that area; Haire: there's no homeowners association in that area; Lynch: so that's not an issue; so the noise and raccoons were complaints by one resident; what kind of noises were they saying the chickens were making; Christensen: I assume the clucking or the moving around in the cage; Lynch: louder than a dog; Christensen: that I do not know; the noise was not described to us; Lynch: then the other one had proof that it had all these problems with salmonella and everything else; could they actually prove any of that; Christensen: no; but to compare it whenever we have anything being built they talk about increased crime and stuff like that but we never get any statistics; some things get blown out of proportion; Lynch: I didn't know they brought forth any kind of evidence; I would have been kind of curious to see it; sound readings or something; that would have been crazy but; Amos: when we're hearing what was in the complaint letters what I didn't hear was that there were any violations of the fence or the building or of manure being kept; I don't hear any of the things that we ask in the variance; Christensen: from the pictures shown everything was met as far as the code that you passed as far as the enclosure and everything Lynch: so it was compliant up to the lay and size; Christensen: yes; Bennett: the residents had also provided certificate of completion of a course; I believe there's a course requirement; Haire: yes Lynch: was there anyone that spoke in favor; Christensen: no we just had the two residents; Lynch: just the two complaints;

David Gilham, 42 Elizabeth Street: I brought in a few things; some of our neighbors were not able to attend; I'm not sure if I'm allowed to show you guys these or not; but a couple letters and we had quite a few neighbors that signed in favor of us having the chickens; real quick some of the descents from last week the salmonella was the one thing that I did not have a problem with someone bringing up; because it can be a problem with backyard chickens if you have an overpopulation and you're not clean about it and they get out and there's people running around touching them and things like that; we don't have that problem; the picture that we showed for the variance does not show that we have a netting over our whole run area; they can't even fly out of where we keep them; secondly this was all started over us having the fence put in; which was originally put in for our dogs; we moved here late October early November of last year; our house has been in the family for I forget how many years; it was built in 53; so we're the third generation to own it; never rented it; my wife's step father worked for the city; did not know that we could not have chickens in the city; my mother in law has lived here for over twenty years and did not know; and neither did our neighbors; I tried to look online for codes; whether or not we we're allowed to have them and could not find any; so I believe where I fell short was actually contacting the city to find out if we were allowed to have them; everybody was fine with them; the neighbors were at our Memorial Day party with the chickens before the fence went up; the second it started going up was when we got the complaint for this; so since then we have been trying to do what is needed of us; to show that we're responsible and that we're trying to comply with

everything to keep them; this is not like we just ran out and bought chickens; we've had them for years; we get them from responsible hatcheries that ensure that they've had all their shots and antibiotics and they are salmonella free when they are purchased; and I'm not sure what more we can do; like I said this was kind of oops we did not see this; I didn't know we weren't allowed to have them; when we moved here we brought them with us; I guess that's where we're kind of at today before you guys; I'm not really good at this whole politics thing so I'm not sure; it's very frustrating for me because when the fence started going up we had issues with the neighbors literally screaming at my wife that we were on their property line and everything else; we already had gone to the city and got our permit and had everything mapped out; as you stated it's a double lot; it's been in the family since it was built; we knew where our property lines were; my wife has cancer and does not need to be submitted to what she was put through; then for them to go and complain about something that they knew was there since November; that's fine; that's their right but that's what's caused this and upsets me; and then to go and spend all the money to do what we needed to do; I understand it's not anybody's fault for the variance getting denied; but it's a little frustrating that's all; am I allowed; Lynch: please; Gilham: one's a letter from our other direct neighbor; the other is people from our neighborhood that signed and said they have no problem with chickens; some of the signatures are from people outside of the city; we had a garage sale and they were just signing; I don't think they realized what they were signing;

Joe Messerly, 255 E Waterloo St: I'd like to say just a little thing about chickens; I'm obviously here for if they can manage them and keep them on their property outside; we don't have any restrictions on dog kennels that I know of; dog houses; the number of dogs we have; the neighbors have; cats that roam freely all over the place and defecate in my flowers and everything else; I think if they have them managed on their property I think they're a great animal to have; other than that I have nothing else to say;

F. Council Discussion and Recommendation

Lynch: prior to the fence going up were there any complaints about these chickens; Gilham: none; Lynch: and the chickens, there was no six foot fence so these were wide open for everyone to see; and how many years prior to the fence did you have them; Gilham: we only have three chickens; which I forgot to mention that as well; the code says you can have six for up to an acre and we've only ever had three; this set of chickens that we have now one is over two years old and the other two are eight months; pretty much all we have them for is eggs; once they stop producing we take them to our friends house who has a much bigger area; her sister's farm; and then we get younger ones; prior to the fence going up it was wide open in the back yard for everybody to see; everyone knew it was there; they weren't even the reason we got the fence; we got the fence because we have a German Shepard and a Pit Bull; so the fence was to keep them contained; so they can run without being on a leash; barking at every car or every person that goes by; Lynch: so you had them at least a year prior to the fence going up and no one said anything; Gilham: we've had them at this residence since November of 2017 and nobody has said anything; the whole neighborhood was at our house for Memorial Day; Bennett: part of the requirements requires a certificate of transcript or receipt showing that the applicant has completed a class in keeping backyard chickens, ducks, rabbits from the Ohio State University extension office or another source approve by planning and zoning; have you obtained any of that; Gilham: yes I forgot to bring it with me; I brought it with me to the last meeting; I got one from the University of Arkansas Division of Agriculture; it was a free online one but it's very similar to Ohio State's; Ohio State's you just have to pay for; Bennett: Mr. Haire is that deemed one of our acceptable approved sources; Haire: there's no acceptable approved sources; Bennett: except for the Ohio State University; Haire: there's no certified list; so it can be anyone that produces any type of certificate; Bennett: but it has to be approved by

the planning and zoning administrator; Haire: correct; Bennett: so would that course qualify; Haire: yes; Lynch: I just want to go back to before we approved this thing on March 5th; there was a lot of discussion about this going from quarter acre to one acre; and I think I was pretty adamant about proposing a quarter acre lot; I think the spirit of actually proving this thing on March 5th was that we would just kind of see what the residents say; this allows for the voice of neighbors to be heard; talking about quibbling over a half acre etcetera etcetera; this is basically an unknown and it kind of allows us time to see where the comfort level is in the community; I think with the absence of two neighbors who seemed to be ticked off about a six foot fence more that they are about chickens; because I don't see any complaint about chickens before the fence; the fence hides the chickens so they complained; I'm not sure what's up with that bit I can only imagine; based on this list that was passed around the neighbors are okay with it; I don't see any reason why we would not accept this variance; one person that complained there has absolutely no proof of any of the things they talked about; the noise from chickens are you kidding me; chickens don't make noise; dogs make noise; and raccoons; my neighbors got raccoons in their back yard and they don't even have chickens; and they're not because of chickens; they're coming because they want to get the bird feed in the back yard; so what do we do stop feeding birds; I think we should; these people have really done their due diligence; they've followed all the rules; they've passed the courses to be able to keep chickens; I don't see any reason why we shouldn't approve it; we are an agriculture community; I'll end with that; we should encourage it; Bennett: Mr. Haire if we approve this variance are we granting the right for six chickens to be held on this property; Haire: yes; Bennett: so if the resident decided he could up the number of chickens from three to six; Haire: yes; Mayor: and you're going to open up to all other quarter acre properties also; Bennett: in the staff recommendations that I'm reading it says a variance from chapter 1181.06 keeping agricultural animals in a non-agricultural district should be analyzed carefully and the site should be application specific; a variance from this code section does not set a precedent for future application based on the unique nature of this chapter; that was the staff's comments; Jarvis: I question that as well; is that true; Haire: every variance is specific to the conditions that are set at the evaluation of that site specifically; Lynch: that's a well closed property with a six foot fence all the way around it; Jarvis: whatever our recommendation is the next time anything similar; the expectation is to be treated the same way; Bennett: I agree and that's why planning and zoning denied it because they wanted us to weigh in first before they made a decision of their own; they're looking for guidance from us; Amos: I think it's very important to go back to what Mr. Christensen said other than the area of space, other than the one acre they met all the other things in that variance request; Jarvis: although that was a provision of the variance and I wouldn't want to get in the middle of a neighborhood squabble, I know it happens all the time but I don't know that we can jump to the conclusion that there's no base for those complaints; I don't know where the burden of proof is for sound or raccoons or noise or whatever; Clark: so the chickens come out and roam all over the yard at times; Clark: they're always in the pen; Lynch: you keep them in the pen all the time; Clark: 24-7; Jarvis: Mr. Clark asked Mr. Gilham a question and he shook his head no in response; Lynch: as far as the noise thing too I have friends who have chickens; chickens don't make a lot of noise; my neighbors two dogs make way more noise than any chickens ever would; and we don't have any ordinances against dogs on the back yard; we allow them every day; Amos: Mr. Haire can I ask you a question; Mr. Jarvis just mentioned the neighbors' complaints; where would that fall under in this variance; Haire: I'm not sure I understand your question; Amos: taking the concerns of a neighbor into whether a variance should be approved or not; Hollins: I can probably address that; it's not just the nature of the fact that they complained; it's to what extent those complaints do offer facts or evidence that are relevant to the criteria; and same thing really with any proponent testimony or facts that are presented; it's nice to get everyone's feelings out on the table and see if there's other issues that can be worked through; but at the end of the day it's what's relevant to the criteria; I think the only thing that would really be relevant would be staff's opportunity to go and make sure if the condition existed and put the

resident on notice that they may need to seek a variance if they wish to continue; other than that it's code criteria from that point forward; Haire: the specific criteria is that granting of a variance in no other manner adversely affect the public health, safety, convenience, comfort, prosperity and general welfare; Bennett: I guess given those criteria where did planning and zoning sort of bat out on the convenience; Haire: it's specifically listed in the findings of fact; Bennett: did I miss that; I'm sorry; Coolman: I would just like to say that when we were first talking about this variance and setting it up this past March I was the councilman that spoke up about if these animals were bating our predatory animals that surround us; Mr. Lynch you brought up raccoons; everybody has raccoons in their yard; yes they're known to attack chickens; they're also known to attack bird feeders; my whole concern over this is the safety of the public; and the reason we talked about it back in March was my stance back then was one acre is what we should have so that we're not exposing the other neighbors for public safety issues if they do lure them in; the only objection I have for this area is that coyotes have struck back; they have gone back there and taken pets back there already; just because it hasn't happened to chickens yet; that's where my thought process is on this; when we look at approving variances you look at the criteria that they've met; have they met the waste handling that we've put up; have they handled the construction of the building that they're required to hold them in; the fencing that's part of it; but the other part that's really an unknown that really doesn't become a real issue in the public's eye is until something happens; and that's public safety; I would just like to say that's what I'm struggling with; Walker: your neighbor had noticed and talked about wildlife; raccoons; have you noticed any difference in more wildlife lately; like raccoons as stated; Gilham: I haven't seen a single raccoon since we lived there; we had field mice and chipmunks and that's all we saw; but I don't see much; my German Shepard kills almost every critter that comes in the back yard; she's killed our chickens before; so if there is something out there that's loose she is going to get them; I haven't even noticed our trash knocked over or ripped open; I would assume it happens; you know the high school is at the end of our street; there's a big wooded area there; but I haven't noticed any more than usual; for example, where we moved from in Columbus our neighbors had chickens and they got taken by hawks and raccoons all the time; and we never lost a single one; they have a run that they're penned in; with a cover or netting over the top so they can't fly out; nothing can get in; they're actually locked up in the coup at night; shuttered windows with throw locks on them; Walker: can I ask you also as far as smell goes; Gilham: part of the variance or request was that cleaning and keeping up the feed; so as we put in the variance the feed is kept inside our back patio in five gallon containers that are sealed; pretty much as soon as we get it we put it in these containers out of the bag; the coup, the roosting area inside, my wife cleans about every other day; the actual bottom of the coup which is lined with hay she cleans weekly; it's all put into plastic bags and disposed of; Walker: so disposed of taken off the premises or composted or; Gilham: the dumpster at a shop I take it to; Walker: as far as the noise; Gilham: we have no roosters; the hens make noise right after laying eggs; and other than a little bit of clucking and we'll talk to them and they'll chatter back and that's about it; other than that they kind of just wander around and peck at the ground and that's it; Walker: and from my understanding and just reading a little bit and researching a chicken will produce one egg per day and that's when they make the noise is that correct; Gilham: correct, depending on the breed; eggs at the max are one a day; some are one every two or three; but in general yes; Walker: and one pound of chicken manure a day; I'm just trying to recall what we talked about back then; but that's done away with and taken off the property; Gilham: that's correct; Walker: that's weekly or monthly; Gilham: yes weekly; Bennett: if granted this ordinance would you see yourself increasing the number of chickens you kept on the property to the max number allowed; Dave: no, we're happy with what we have; like I said we get eggs for ourselves, our family, our friends; and actually one of the recommendations from planning and zoning if they were to approve it was that we have no more than three on our property; and if it got approve that was a stipulation; Bennett: Mr. Haire if council elected to grant the variance do we have any opportunity to set limitations; within the variance to ensure a limitation;

Hollins: the answer is yes; condition to variance on; for instance I don't know if our code calls out that you have to have a structure but if you do it's got to be shown on the permit application so one condition may be that he maintain the structure as shown at this point and in its current location etcetera; and another may be the number of hens kept; and the fact that they are hens; of course I think our code prohibits roosters; anything like that that you feel; again that would also address the nest application that comes down the line; in terms of setting precedent these are the type of things we need to say; specifics on circumstances that we're looking at each one on a case by case basis; Haire: I will note that the coupe is currently in the rear yard setback which is not permitted in our code; Lynch: so it would have to move so many feet away from the fence; Haire: yes; it would have to move 30 feet away from the fence; Lynch: 30 feet away from the fence; Haire: from the property line; Lynch: what about the side yard line; Haire: the side yard setback is eight feet; Lynch: and or it could go right behind the garage or is the garage or is the garage on the setback; Haire: not familiar enough with the property; Lynch: there's a ten foot easement in the back; where does the 30 feet come from; Haire: it's the rear yard setback requirement; it says it must be completely to the rear of the principal structure and it shall be located to meet the rear and side yard setback requirements of the applicable residential zoning districts; they shall not be located within any recorded easement; so I believe that it is currently; I don't know where the fence; Lynch: could this be an accessory structure; Haire: is in relation to the survey that I'm looking at but there's a ten foot easement across the rear property line; Lynch: it looks like even that garage encroaches that 30 foot setback; Haire: yes; Lynch: so whatever got put in like a coup would have to be compliant to that 30 foot even though the garage encroaches it; it's grandfathered in; Haire: garages have an accessory setback; there's a different setback for accessory structures; Lynch: could this be an accessory structure; Haire: that's not how it's written in our requirements; Lynch: so an eight foot side yard setback if it was put on the side of the yard and 30 foot off the back it would be compliant; just the structure itself not including the run for the chickens; Hollins: again you could condition your variance on where you would like to see it placed; Lynch: I was trying to follow the zoning; Hollins: that particular requirement for coups is part of the chicken code; it's not treated like other accessory structures because our particular chicken code says it must meet the rear yard setback; Lynch: I was about to say the coup is kind of like a shed or a doghouse; so does that still have to meet the setback; Haire: yes this was designed for a one acre lot so there should be no issue for a one acre lot; finding a space to put this that isn't in setbacks; you get into a smaller lot situation it's more difficult to find a location that would meet that requirement; Amos: so I want to make sure I'm understanding you; you're saying that there's another ordinance that says they have to be 30 feet away from the fence line and the chicken variance says that they have to be and is located completely to the rear of the residential property and is at least ten feet away from the property line; Haire: number seven in the zoning code for 1181.06; B1 that regulates chickens says that the building used in connection with the keeping of chickens, ducks or rabbits shall be located completely to the rear of the principal structure and shall be located to meet the rear and side yard setback requirements of the applicable residential zoning district; so this is an R3 zoning district so we defer to the setbacks for that zoning district which are an eight foot side yard and a 30 foot rear yard; Hollins: for structures and then usually what that says is a coup you have to move a 30 foot setback; believe it or not our code on other accessory structure, accessory structures don't have to meet that 30 foot setback; that's another part of the code; specific controls over general; so the way it's written right now coups aren't maybe accessory structures but they specifically must meet the 30 foot setback; Amos: so as Mr. Lynch was saying if they move it to the side yard eight feet away from the side yard then they would be in compliance again; Hollins: only with the side yard; unless you guys include it as a condition of some variance that they could be however far back the garage is or in its current location; it would be something you would want to address in any variance; that you would grant if you do; Clark: do you have a plan prepared to move this and where would that be; I'm kind of looking at your back yard; Gilham: we didn't; we're actually kind of confused right now; because when we took everything in

we were under the impression it was where it needed to be; our fence stops at the easement and there's another ten feet to the rear property line; it is all the way at the back; so when we turned everything in we thought we were where we needed to be; Clark: so if he's got ten feet back he needs 20 more up towards the house then; am I understanding that right; Haire: correct; Lynch: and it has to be behind the main structure not an accessory structure; so it has to be behind the house not necessarily behind the garage; so if it got moved to the right side of the garage in that little white picket fence area it would be compliant with the setback code; Hollins: it certainly would be if you address it in your variance it would be compliant; Jarvis: here's kind of the options the way they break out; council could recommend to uphold planning and zoning's decision; two we could overturn planning and zoning's decision; to overturn it with or without conditions as we're talking about right now regarding the number of chickens and the setback of the structure; or if there is additional information that can't be processed here and now to hold this over until the next meeting; Hollins: everything you said I agree with; and we will have to technically write up something for you for the next meeting; tonight you'll probably take it under advisement; give me direction and I'll give you something back which are your findings in fact; the next meeting is the end of our 60 days so we do have to act on it next meeting; but we would want to embody your decision in a document; Lynch: do we have to vote on a recommendation to give to you; Hollins: no and we are having an executive session later; we can discuss; it's a quasi-judicial matter; we can make our final call on the decision then and I will bring it back to you for the next meeting; Bennett: if council were to approve the variance with the instruction that the structure had to be moved to the side of the garage or the white picket fence area there is that still screened from the street by that side of the garage; it's not visible from the street; Gilham: no; there's a small gate fence that you walk from in front of the garage to the back patio of the house; so it's blocked by the garage from the neighbor on the left; it would be blocked by the fence from the neighbor on the right and from the front it would actually be blocked by the house; Bennett: my question was if that was a requirement would that be amenable to you; of part of our approval process was that it needed to be moved would that be acceptable; Gilham: we could do that; right now it's a little rock bed with some hostas and stuff; if we take those out it's fairly flat; we the chickens raised off the ground so that they're not sitting in water; keeping them up off the ground keeps the smell down and everything; it would be fine because we could extend the run behind the house so they have room to move around; I wouldn't be opposed to it; Jarvis: Mr. Hollins has suggested that we summarize this and any conditions that would need to be racked and stacked; or rather decided right now; Lynch: I say we make a recommendation that we write something up to where the coup is placed along the north side of the garage and no more than three chickens; if we can write up the language for that; Coolman: Lucas how close is that to meeting the 30 foot setback; Haire: there's a 41.8 foot rear yard to the house; I'm not sure what that distance is to the garage; Coolman: thank you; Lynch: so it looks like 30 feet based on scale form the plot; if they put that coup in about the center of that garage it will be pretty dag on close to 30 feet from the rear yard; I don't have a scale on me but it's pretty close; Jarvis: and that's why I feel we need a little more time to do this than two weeks; and I apologize folks; a decision this evening is a little more complex than we thought; Hollins: I'd suggest that we take it under advisement and we can discuss it more in executive session and I'll crank something out for the next meeting if you want;

G. Adjournment @ 7:16 p.m.

A motion was made for adjournment by Walker, seconded by Bennett. The motion carried with the following vote:

Yes 7 – Walker, Bennett, Amos, Clark, Coolman, Jarvis, Lynch