



Historic Town of Hyde Park  
Zoning Board of Appeals  
4383 Albany Post Road  
Hyde Park, NY 12538  
(845) 229-5111, Ext. 2

*"Working with you for a better Hyde Park"*

## **MINUTES for**

### **PUBLIC HEARING/REGULAR MEETING** **OF THE HYDE PARK ZONING BOARD OF APPEALS**

**Held on March 22, 2023 6:00 PM**

**Meeting held at Hyde Park Town Hall, 4383 Albany Post Road, Hyde Park, NY**

#### **ZBA Board Members in Attendance:**

**Present**      **Chairman David McNary**  
**Present**      **Vice Chair Gerald Bowen**  
**Present**      **James Agrawal**  
**Present**      **Paul Donnelly**  
**Present**      **Richard Perkins**

#### **Others Present:**

**Sarah Ryan**                      **Attorney to the Zoning Board of Appeals**  
**Kathleen Moss**                **Zoning Administrator**  
**Kathleen Hoppe**               **ZBA Secretary**

#### **PLEDGE OF ALLEGIANCE**

*Chairman David McNary opened the meeting and led the Pledge of Allegiance.*

**Chair McNary:** We have no minutes for approval for the February meeting, so we will wait for that for next month. That was a long meeting and I think we're working on that.

#### **NEW PUBLIC HEARING:**

##### **CHEVEZ**

**Owner & Applicant:** Edis Chevez

Location: 32 East Market Street, Hyde Park  
Grid #: 6065-04-914274

**Area Variances – Section 108-4.3B(5)(b) Animal Husbandry** – to allow animal husbandry to be conducted as close as 171 feet from a residence on another lot where 350 feet is required (or 250 feet without a rooster), and

**Section 108-4.3B(5)(d) Animal Husbandry** – to permit unenclosed storage of manure as close as 171 feet from a residence on another lot, where 250 feet is required.

**Chairman McNary introduced the Chevez application, and asked for a motion to open the public hearing for it. James Agrawal made the motion, and Paul Donnelly seconded it. The motion passed by unanimous voice vote.**

*Mr. Chevez, his wife and two children came up to the table designated for applicants.*

**Chair McNary:** Welcome. We've received your application. Tell us a little bit about what you want to do and why you've come to us today.

**Mr. Chevez:** My kids love the animals. When I saw the little baby chicks, I said, I don't need a puppy, I need some chickens. I bought them for them. I didn't know there was a problem with that.

**Chair McNary:** Okay. How long have you had the chickens now?

**Mr. Chevez:** Almost one year.

**Chair McNary:** One year, okay. Roughly, how many do you have?

**Mr. Chevez:** One and a half years, almost two years. I moved from Long Island, moved with my family here.

**Chair McNary:** How many chickens do you have?

**Mr. Chevez:** When I bought the little ones, they said I could buy three or four. I bought six, half dozen.

**Chair McNary:** So now you have six?

**Mr. Chevez:** I have five.

**Chair McNary:** Five. And a rooster?

**Mr. Chevez:** Yes, together, the rooster, same one [included with the five].

**Chair McNary:** You know you don't need the rooster for the eggs.

**Mr. Chevez:** I didn't know that, but I bought six, they came with one rooster and the rest of them hens.

**Chair McNary:** You can still get eggs without the rooster. I guess we have something to learn here too. So you are seeking a variance, you are close to a number of properties there. Can you talk a little bit about your feeling about how it's impacting the neighbors? Are you hearing anything from your neighbors?

**Mr. Chevez:** I have two or three neighbors that are close to my house, when they see the chickens, they say they like them. But they are not trespassing across the fence.

**Chair McNary:** We do have a letter from the Weatherwaxes, do you know them, your neighbors down the street? They did write a letter, and I'm going to read it in a little bit. There may be some other comments too.

**Paul Donnelly:** Mr. Chairman, can I ask a question?

**Chair McNary:** Absolutely.

**Paul Donnelly:** I just want to know, what brought you here? Because I see that you have a Notice of Violation. So how did that come about?

**Mr. Chevez:** What about the violation?

**Paul Donnelly:** It's a Notice of Violation, Order to Remedy, dated November 14, 2022. So how did that come about? Why did you get a violation?

**K. Moss:** There was a complaint, and I needed to observe the birds before we sent a complaint, and it took me quite a while before I actually saw them. After that, the Notice of Violation was sent, there was an Apparent Violation and a Notice of Violation that was sent, and Mr. Chevez has come in and requested the variance because that's the remedy that has to be offered to him, so that's why he's here.

**Paul Donnelly:** Can I ask you what you saw?

**K. Moss:** At the time, I saw a brownish-red bird, I don't know whether it was a hen or a rooster, in the front yard near the white vehicle that was parked in the driveway.

**Paul Donnelly:** So it was loose.

**K. Moss:** At that time it was loose, I don't know if there's loose now.

**Chair McNary:** Ms. Moss, the violation that you're asserting is what – can you define it a little more, please?

**K. Moss:** There is a requirement in the zoning code for site plan approval for animal husbandry. And animal husbandry is defined as keeping and care of non-household pets, basically. And the chickens fall into that category. There is a distinction in the code between roosters and hens or other birds, based on noise. So the distance separation that's required between the pen, where the animals are kept, and adjoining residential buildings is 350 feet for the rooster and 250 feet for the hens. This home is closer to other homes, and the pen, as described, is closer to other homes than is required in the code, so they require variances before they can go and apply for site plan [approval].

**Chair McNary:** Okay. Is there anything in terms of a requirement for the waste products of the animals?

**K. Moss:** Yes, there's a whole list of things with distance separations – wells and wetlands and watercourses, and where the manure is kept, and whether it's enclosed or unenclosed, and that's all outlined in the code. I can open it up and read it to you if you like.

**Paul Donnelly:** Is there an enclosure for the chickens?

**Chair McNary:** Is there a pen?

**Mr. Chevez:** Yes. Sometimes they have a space in the backyard, they go for a half hour, they go on the grass, but they have a lot of space.

**Paul Donnelly:** So them getting loose is no longer an issue?

**Mr. Chevez:** No.

**Richard Perkins:** Just for a precautionary measure, do you have any kind of fence around the back perimeter of the home?

**Chair McNary:** Around the backyard.

**Richard Perkins:** Aside from the chicken pen, does the property line have any fence around it?

**Mr. Chevez:** Yes, everything's closed. They have a fence for their ones (chickens).

**Chair McNary:** The chickens have a fence. But do you have another fence, a second fence?

**Mr. Chevez:** A second one, no I don't have it right now. That's what I need for this year. *(unintelligible)* I put the fence [for the chickens], that's why I asked a couple of weeks ago. They said that's fine, [but I also] need a fence for the front of my house and the sides.

**Chair McNary:** Do you have a container for the chicken waste?

**Mr. Chevez:** I made a hole, and I put it inside the hole. I don't put it in the garbage.

**K. Moss:** So it's composted.

**Chair McNary:** Are you aware, the distance -- we've talked about, how close or how far the chickens have to be from other houses, which I think is one of the issues here. I don't know if you've seen this? *(holds up map with distances shown to the 14 residences from the Chevez residence, which require variances)*

**Mr. Chevez:** Yes, almost, I think, 200 feet, every house. I didn't check across the street to the other house.

**Chair McNary:** 250 feet, you have one, two, three, four, five, six -- it looks like six houses are less than 250 feet.

**Mr. Chevez:** Yes, close to my house, there's only two, one on the front of [East] Market Street, and one on the other side.

**Chair McNary:** If you go the 250 [feet], which is supposed to be the minimum distance between the chickens [and nearby residences], not the rooster, rooster's separate, it's 250 feet. So I see five or six houses that fall within that. 350 feet for the rooster, you've only

got two houses that are outside that – no, you don't even have one, they're all in that, so with the rooster, you've got a lot of distance there.

**K. Moss:** So that's eight houses? It's the six for the 250 plus two more, is that what you were saying for the rooster?

**Chair McNary:** Rooster is 350.

**K. Moss:** Yes. So how many additional houses, if there were six houses within 250, how many additional houses? So it's a total of eight.

**Chair McNary:** No, eight more. So if it was 350 feet with the rooster, you've got 14 houses that fall in that, which is a lot. If it's 250 feet, which is for the chickens, it's just six houses that fall within that.

**Richard Perkins:** In the past, other people have come before us to get chickens, and I don't think anybody was successful in keeping their rooster. Were they?

**Paul Donnelly:** No.

**K. Moss:** Not that I recall.

**Richard Perkins:** Under our rule, no roosters have stayed. They've had to find a new home.

**Mr. Chevez:** That's what I said before, when I bought the babies, I didn't know if they were hens or roosters.

**Richard Perkins:** The rooster protects the chickens. They do, they'll fight off a raccoon, or anything like that. But you don't need them for the eggs. Unless you're going to make more chickens.

**Chair McNary:** Are there some other things you'd like to -- other information that we don't have, that you would like to share with us, at this point? Any other comments or thoughts?

**Mrs. Chevez:** The teacher from [my son's] school, she says she's happy, because he talks to her a lot about the chickens he has at home. She says he comes to her and says how he takes care of the chickens. So that's the comment I have.

**Chair McNary:** That's good. Do you take care of the chickens? (*directed to youngest son, who nods*)

**Chair McNary:** That's good, that's good.

**Mr. Chevez:** He plays with the chickens when they are outside.

**Mrs. Chevez:** He says when he grows up he wants to be a farmer.

**Richard Perkins:** Good, we need them.

**Mr. Chevez:** That's why I bought them, for my kids. In Long Island, everything's close [together]. I saw this house, and I said, okay, I have a chance.

**Chair McNary:** I'd like to share this, this is a letter we received, and we need to put this in the public record. This is from Roland and Mary Witherwax at 28 East Market, so they're two houses down from you, I think.

*Chairman McNary read the following comment letter into the record:*

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Thank you for the opportunity to submit our comments regarding the Chevez application for Animal Husbandry.

We would ask that this is **NOT approved** for the following reasons:

1. When the chickens and rooster are allowed to roam free they make their way to our property and peck and dig into our flower beds and lawn. We have had to chase them off of our property several times over the last year and a half.
2. The rooster crows ALL hours of the day and night, which is truly annoying.
3. We have seen them very close to the road. If they go into the road they could get hit and/or cause an accident. Because it's on a bend in the road you do not see them until you are upon them.
4. If this application is approved, this could possibly set a precedence for future residences in the neighborhood to also apply and what assurance would we have that they would not be approved as well.

As taxpaying homeowners we believe we have a reasonable expectation to live on our property in our neighborhood without having to listen to and chase chickens all the time. We also believe that having farm animals of any kind provides a potential risk of hindering property values in this area.

Sincerely,

Roland and Mary Witherwax  
28 E. Market St.  
Hyde Park, NY 12538

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**Chair McNary:** So, they're concerned about noise, they're concerned about the chickens that are roaming free, which is one of their concerns. I want to put that in the public record. Is there another individual, you? *(directed at neighbor Barbara Hobens in the audience, who comes up to make comments and show videos on her laptop.)*

**Barbara Hobens:** Hi, my name is Barbara Hobens, I live at 31 East Market Street. And first of all, I love animals. But I really wish the applicants had looked up the code or asked about the law before they purchased the rooster and the chickens. I ask that both

variances not be granted. The codes are in place for rational reasons, not to disturb neighbors with noise or odors. To be up to code for animal husbandry, a parcel must be almost three acres, but this parcel is .39 of an acre. The requested variances are not just a few feet out of code, they must be 350 [feet] away, 250 [feet] without the rooster. In this case, had to be more than twice as close, not just to the neighbors' property line, but to their houses. Legitimate concerns are rooster noise, smell from chicken manure on hot summer days, chicken feed attracting rodents, and an increase in local predators. We do have skunks, coyotes and fox. I have a map and a few videos that are just thirty seconds each, just to share with what we hear. Regarding the unenclosed storage of manure variance, Crum Elbow [Creek], which is northeast of the parcel, is less than the required 300 feet from a watercourse. Roosters are loud. The crowing of a rooster can be heard more than half a mile away, and registers from 90 to 130 decibels. According to *Fresh Eggs Daily* blog, 130 decibels is an average rooster crowing, and temporary hearing loss is at 120 decibels. The parcel is also on a hill, so sound travels even more. And the prevailing winds, south to north in Hyde Park, provide both sounds and it could be odors on hot days. I did speak with Cornell Cooperative Extension, and was told a rooster is absolutely not needed for eggs, for the hens to lay eggs, and that a chicken coop and a run would protect chickens, the rooster is not needed for protection. And I just want to show you what I have. *(Ms. Hobens brings up some video, with audio recording, on her laptop connected to the big screen, using pointer to point out various locations.)* On this map, this is the parcel, and Crum Elbow Creek comes this way. And this, I would gather, is 172 feet, and that's about here, and I know these maps are not exact, but I think it's close to Crum Elbow Creek, which is a Class C stream in New York.

**Chair McNary:** Your point there, Ms. Hobens, is the location of Crum Elbow [Creek] relative to the property.

**Barbara Hobens:** Right. I notice it's also a violation of your waterway [regulations], so Crum Elbow Creek is right there, it could be impacted. *(She brings up the next video.)* This is my front door.

**Chair McNary:** It's a good comparison with the road noise too.

**Barbara Hobens:** The road noise is actually white noise, when you think about it. *(She brings up the next video.)* This is my dog. The rooster and hens come around here. *(She brings up the next video.)* This is the rooster. The hens are down here.

**Vice Chair Bowen:** Is this taken from your yard?

**Barbara Hobens:** Yes. It's free range *(referring to the rooster)*.

**Vice Chair Bowen:** And when is that from?

**Barbara Hobens:** This is from last June.

**Richard Perkins (to Mr. Chevez):** And you've taken some action since then as far as the pen? You've improved your pen to hold the rooster and the chickens?

**Mr. Chevez:** Yes.

**Richard Perkins:** Okay.

**Barbara Hobens:** This is my garden.

**Mr. Chevez:** Last year they had-- (inaudible)

**Barbara Hobens:** I'll just show this one. This is my backyard.

**Richard Perkins:** Are you sure that isn't geese? Sounds like geese going over.

**Barbara Hobens:** That's not geese. This is the rooster.

**Vice Chair Bowen:** What time of day is this?

**Barbara Hobens:** Afternoon.

**James Agrawal:** Can you hear the rooster inside the house?

**Barbara Hobens:** Yes, this is the side of the house, and the last one is the backyard. So I took front yard, side yard, and backyard.

**James Agrawal:** No, can you hear inside?

**Barbara Hobens:** Oh yes. With the doors and windows closed. Absolutely. *(She brings up the next video.)* This was in the backyard with a water feature going, I tried that. That's the last one. It's all hours. *(A rooster can be heard on the video.)*

**Paul Donnelly:** That's a rooster. Barbara, I have a couple of questions for you. Is your complaint mostly with the sound of the rooster?

**Barbara Hobens:** Oh yes.

**Paul Donnelly:** The rooster.

**Chair McNary:** If the rooster is not there—

**Barbara Hobens:** I don't mind the sound of a hen.

**Paul Donnelly:** If the applicant had an enclosure, and stayed on top of the manure – now did you say you smelled anything, or you said there could be a smell?

**Barbara Hobens:** There could be. Actually, unenclosed manure is better for no smell than churning it. If you use the compost or churn it, it's going to smell.

**Paul Donnelly:** But you haven't smelled anything at this point.

**Barbara Hobens:** No, I have not.

**Paul Donnelly:** My question is if the applicant provide an enclosure, and they had no rooster, and stayed on top of the manure, would it be good enough for you?

**Barbara Hobens:** Would it be for me, personally? Yes. As long as they don't compost the manure, if it's unenclosed, they can use lime or bedding, but don't churn it. That's the



opposite of people's compost in your home. But chicken manure smells. And chickens smell. And it's quite close by, so it's a concern.

**Chair McNary:** Other people for Ms. Hoben? Rich?

**Richard Perkins:** I own a house in the first six also, and I have talked to both of my tenants, and they don't have any problem with the chickens, the noise, or anything. When they do hear it, they enjoy it – that's what they told me.

**Chair McNary:** Clearly the noise is something that's disturbing. Ms. Hobens, we appreciate you coming.

**Barbara Hobens:** Thank you very much.

**Chair McNary:** What I would like to propose is that we make a site visit to come out and see you, and I think it would help us as well. Clearly it sounds like the rooster noise is an issue. What we'd like to do is set up a time convenient to you that we could come out. We'd like to do that before the next meeting. What we'd like to do is continue this meeting to the next month, and in that time, we would be able to come out and see you, visit you.

**Mr. Chevez:** Yes, no problem.

**Chair McNary:** Let's see for ourselves, and see if there are any other neighbors that have concerns.

**Mr. Chevez:** Yes, I don't want a problem with the town, I want [the chickens] for my family enjoyment. Last week my neighbor from Long Island came and said, I need a chicken, give me one, so I gave him one. I don't want a problem with the town, I like the schools, I like everybody.

**Richard Perkins:** The idea is that we are here to try and work out some kind of a compromise, or something that might work for you.

**Vice Chair Bowen:** We want to help you.

**Mr. Chevez:** Thank you.

**Sarah Ryan:** Mr. Chairman, if I may?

**Chair McNary:** Yes?

**Sarah Ryan:** Regarding the site visit – my general advice for boards – I don't know how you guys usually do it out here, this is my first meeting – but I recommend that you stagger the times that you do the site visit. You cannot go as a quorum, and if you do go as a quorum, you can't have any discussion.

**Chair McNary:** Okay.

**Richard Perkins:** We have done that before.

**Chair McNary:** Yes, we've done that before, in terms of that. So probably, for the convenience of the applicant, we can go and we'll just observe. I won't have questions.

**Richard Perkins:** We'll write them down.

**Sarah Ryan:** I wanted to put that on the record.

**K. Moss:** Mr. Chairman, I would like to clarify that the measurement was from the pen to the stream, not the property corner to the stream, that's why we didn't think it needed a variance.

**Chair McNary:** Okay.

**K. Moss:** And it was done on Parcel Access, it was not a survey.

**Chair McNary:** Okay. All right, thank you.

***Chairman McNary asked for a motion to continue this public hearing to April 26, 2023. Richard Perkins made the motion, and Paul Donnelly seconded it. The motion passed by unanimous voice vote.***

**Mr. Chevez:** Thank you.

**Chair McNary:** We appreciate you coming, and we look forward to seeing you.

**Richard Perkins:** I have one more question. You said that you had the pen out front and you moved it to the back?

**Mr. Chevez:** Yes, now everything is in the back.

**ADJOURN:**

***Chairman McNary asked for a motion to adjourn tonight's meeting. James Agrawal made the motion, and Richard Perkins seconded it. The motion passed by unanimous voice vote.***

*The meeting ended at approximately 6:30 PM.*