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**Members Present:**

David Everett, Chairman  
Kary Jablonka  
Adrian Ooms  
Suzanne Williams  
Robert Leary  
Mitchell Khosrova  
Tal Rapplea, Atty.  
Walt Simonsmeier, ZEO

**Members Absent:**

Mike Hart

**Public Present:**

Jerrold Gilbert      John E. Buford  
Fran Sindlinger      Patricia W. McKay  
Elizabeth Arace      Jean Rohde  
Karen Leffinguiell      Kate Stuber  
Bill Better      Lynn Skordilis  
Nancy Schultz      Jack Schultz  
Richard W. Schrage  
Mary Gail Beibel      Randi Walker  
Tatia Shelow      Terry Buck

The September 28, 2006 Zoning Board of Appeals meeting was called to order by Chairman Dave Everett at 7:01 PM. The Pledge of Allegiance was recited. Kary Jablonka moved, and Bob Leary seconded that the amended minutes from the previous meeting be accepted. This carried unanimously. Chairman Everett reported that the governor recently signed into law 4 hours per year of mandated training for zoning board and planning board members. ZBA members need to start thinking about this. There are many available opportunities, which can include in-house training. The Board has to approve what is acceptable.

**CHERYL DAMON- REQUEST FOR A VARIANCE WHICH WOULD ALLOW AN OVERHANG ON HER BARN THAT DOES NOT MEET SETBACK REQUIREMENTS PUBLIC HEARING (cont.)**

Carmine Franco is representing the applicant, as Ms. Damon's son is ill and she is unable to come to this meeting. Chairman Everett reviewed that a decision had to be put off because there had been earlier problems relating to the dogs, and the Board wanted to see what decision the courts had made in this regard. Atty. Rappleyea reported that the courts stated that no more than 3 dogs be allowed on the property. Ms. Damon had written a letter to the Board stating that she was confused as to why the dogs were brought up in this request. Chairman Everett asked Mr. Franco how many dogs were at the property at this time, to which he replied there were 7 dogs. Mr. Everett reiterated that the Court had allowed only 3. Using the site plan, both Mr. Franco and ZEO Walt

Simonsmeier reviewed where the dogs are currently being housed on the property. Robert Leary stated that he felt that a vote could be taken immediately because the applicant had been told to hold up on constructing the overhang, which was blatantly ignored, and the quality of life for the neighbors has been compromised. He feels the Board should vote against the proposal and that the overhang be removed. Suzanne Williams read a portion of a submitted letter where the neighbor had called the work facility of the applicant and was told that boarding dogs took place in Old Chatham. Mr. Franco said that he would be surprised if that actually happened. When Mr. Simonsmeier was questioned by Chairman Everett as to whether the allowed three dogs could live together on one side of the barn, Mr. Simonsmeier replied that a lot of factors had to be considered, such as whether the dogs get along. Mitchell Khosrova stated that he was worried about the precedent that could be set. He felt that evidence has not been brought forth that would convince the Board that this variance should be approved. The applicant has not appeared herself any of the three months that this has been on the agenda, despite a letter requesting her attendance. This is her burden of proof which hasn't been met. Kary Jablonka added that based on what he has heard, this variance request does not meet the necessary criteria. The Public Hearing was reopened at 7:23 PM.

Jerrold Gilbert stated that the dogs have been an insufferable nuisance since this woman moved in. There is constant barking/ baying at passing raccoons or people. Mr. Franco has come to the house to apologize and he has been very polite at all times. Mr. Gilbert stated that he shouldn't have to put up with a kennel and a place of boarding. He feels that the variance should be denied and enforcement of the court decision of no more than three dogs should be carried out, and Ms. Damon should be fined for not adhering to the court decision. Mitchell Khosrova said that the ZBA does not handle violations. The Public Hearing was closed at 7:26 PM. Mitchell Khosrova moved that the variance request be denied. Robert Leary seconded the motion and it carried unanimously. Robert Leary moved that the ZBA recommend that the Town Board pursue enforcement on all levels of the court decision, as per the letter of November, 2005. Mitchell Khosrova seconded the motion and it carried unanimously.

**JAMES AND PATRICIA MCKAY-REQUEST FOR AN INTERPRETATION  
REGARDING BEING ABLE TO USE LAND IN AN H-1 ZONE FOR CHICKENS**

Patricia McKay read a prepared statement. Chairman Everett stated that last month they had asked for a variance, but then decided to go for an interpretation. He asked specifically what they are asking. Mrs. McKay stated that they are asking that 4 hens be considered a residential use, rather than an agricultural use. Mr. Everett asked if the subdivision request had been withdrawn, to which Mrs. McKay said it had. Kary Jablonka said that he felt that the Board had already set a precedent regarding chickens in an H-1 zone with the Hallenbeck decision, which stated that chickens are an agricultural animal that are not permitted in an H-1 zone. It was also brought up that many towns, cities and villages do allow some animals, but this is not allowed in the Town of Chatham. Mrs. McKay wondered if this could be considered an accessory use to a traditional residential rural use, as chickens have been kept in this Town for generations. Mr. Everett said enforcement would be hard to handle on an individual basis. Robert Leary said that a hen is a chicken and chickens do not belong in a hamlet. Mrs. McKay said that the impact on land use would be the same for having guinea pigs as chickens. Mr. Everett invited public comment.

Mary Gail Beibel said that she hoped that the Zoning Board would show support for the interpretation. Chatham is a community in transition and it is important to understand others' positions as far as the impact on the community. She feels that many times that there are animal issues it usually relates back to farm animals, which is troubling.

Terry Buck had a goat and a chicken in the Village of Chatham that had to be removed. She was very disappointed in this decision because her children withdrew from 4-H, since they couldn't have the animals. They were pets to her children, not livestock.

Randi Walker said that her neighbor approached her to tell her that he wished to have chickens. She had no problem with the request, nor does she have any problems with the chickens.

Fran Silinger was very concerned about the impact on a wetland. Because of diseases such as the avian bird flu, it is advised not to keep poultry near migratory birds. Composting the waste should be done in a warm area, not a cold wet area. Hence, she has many health concerns. If this were to be allowed, who would govern it?

Bill Better said that the Board has already determined that chickens are agricultural. Whether the property is 10,000 square feet, which many of the homes in this H-1 zone are, or larger, the code applies to all. Administering the code would be very difficult. He requested that this interpretation be turned down.

Lynn Skordilis reiterated that this is a small lakeside community not a farm area. The Board required that the applicant send notices to the neighbors. In this area, over 30 notices had to be sent. Why send the notices if the Board isn't going to listen to what the neighbors say?

Mitchell Khosrova questioned why a specific number is so important—it isn't with dogs, cats or fish. Dave Everett stated that we don't want to be involved in having to count. Mr. Khosrova said that if this is a residential use, it would be treated the same way as a dog. The impacts do have to be considered and whether a precedent would be set. Would a number be relevant? Chairman Everett said that he feels it is up to the Comprehensive Plan committee and the Town Board to determine both the number of permitted animals and the kinds of animals that are acceptable. Kary Jablonka said that since we don't have the new criteria for this yet, it is very difficult to make an interpretation. Mitchell Khosrova said that there is a great deal of ambiguity with this issue. Suzanne Williams stated that the applicant realized that they couldn't meet the criteria for the variance even when they were given additional time to come up with proof to meet the criteria, withdrew the variance request and went to an interpretation request. They relied on the newspapers to get public sympathy. If they felt so strongly about having these chickens they could have gone to the neighbors and worked this out. Mrs. McKay responded that public information is part of the democratic process. Suzanne Williams said that she felt that we are looking at far more than the issue of 4 chickens. Kary Jablonka asked Atty. Rappleyea if the Board had enough information to make a decision. Atty. Rappleyea said that a Public Hearing is not legally required for an interpretation. As is this Board's practice, notice of this agenda item was published prior to this meeting. Atty. Rappleyea added that it is the Board's responsibility to look at the plain language of the code to make a decision. Mr. Leary stated that the Board has determined that chickens and turkeys are agricultural animals. Mitchell Khosrova said that this could be interpreted as a residential use. We've heard from experts in the field. The Board has the knowledge that this is different from the other case with chickens and turkeys. Suzanne Williams said that not in a hamlet should these animals be allowed

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because of the proximity of the neighbors. Kary Jablonka feels that to reverse the decision made earlier could be infringing on legislative rights, which the Zoning Board does not have. Dave Everett says that he feels that having 4 hens is not that big of a problem, but given what has happened before with the decision on chickens being agricultural animals and not allowed in an H-1 zone has given a prior precedent. The Comprehensive Plan committee needs to decide what is allowed and not. Suzanne Williams moved that the Board deny this interpretation and uphold the precedent stating that agricultural uses are not allowed in a hamlet. Robert Leary seconded the motion. There were for Ayes and 2 Nays (Khosrova, Ooms), so the motion carried. Dave Everett moved that the Zoning Board request that the Comprehensive Plan committee deal with issues like this and set parameters. Kary Jablonka seconded the motion and it carried unanimously.

Kary Jablonka moved and Mitchell Khosrova seconded that the meeting be adjourned. The meeting ended at 8:23 PM.

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David Everett, Chairman

Respectfully submitted,

Marilyn Cohen, clerk