

# Board of Adjustment Meeting

July 2, 2024

7:00 p.m.

Present: John Petro, Pat Kennedy, Gary Cimaglia, Carlton Thompson, Sue Muncey, Ryan Quackenbush, Scott Chambers, Marvin Pedigo, Zachary Petro, Danny Petro, Tabatha Roth, and Heather Lightcap were in attendance.

Mr. Petro brought the meeting to order. Mr. Petro led the Pledge of Allegiance.

*Mr. Kennedy made a motion to adjourn into executive session. Mr. Cimaglia seconded the motion. Motion carried unanimously.*

*Mr. Kennedy made a motion to end executive session. Mr. Cimaglia seconded the motion. Motion carried unanimously.*

*Mr. Kennedy made a motion to reconvene into regular session. Mr. Cimaglia seconded the motion. Motion carried unanimously.*

Mr. Petro stated we have gathered this evening to hear a variance for emotional support animals for 80 Sammon Drive by Tabitha Roth. The floor was given to Tabitha Roth to present her case. Ms. Roth stated she and her son have been diagnosed with PTSD. Her son's doctor recommends emotional support chickens to decrease anxiety. You would know the process of owning the animals, watching them grow, and having the success of being able to sit outside with them at night and just watch them, relax, and interact with them. This was recommended by his therapist and then my therapist. The letter is primarily for him, but because he is underage, she does not want his name in the paperwork. She spoke to the Department of Agriculture and asked what she has to do. She just had to register a backyard flock. She stated she does not want roosters. If we find out we have a rooster, we will give them away to another farm. It will be something small so that my son and I can have something to bond over and it can help decrease his anxiety and stress. Mr. Kennedy mentioned flock. Is that two chickens? Ms. Roth said yes two. Mr. Chambers asked a procedural question about the application submitted. The psychologist in North Carolina only speaks of you, not your son. Ms. Roth stated she does not want his name on anything. Mr. Chambers stated so the only thing before the board is. Ms. Roth stated for myself. She has been diagnosed with PTSD, anxiety, and depression. Mr. Chambers stated he just wanted to clarify. Mr. Cimaglia asked if there was a Homeowner's Association. Ms. Roth stated there is. Mr. Cimaglia asked if they ruled on this. Ms. Roth stated they sent her a letter and it has not been to court. I am willing to fight it. Mr. Cimaglia stated so they did not approve of this or are you still working with them? Ms. Roth stated they did not approve. She is waiting to see the outcome from the board with the additional support. Mr. Cimaglia asked why. Ms. Roth stated livestock. No livestock in the yard. We have a coup for ten birds. They would stay contained. Mr. Thompson stated you live in a development with a HOA. Should it not be approved before we decide? Ms. Roth stated this is a new precedent. Mr. Cimaglia asked if this was brought up to change. Ms. Roth said no. The HOA started in 2003. They do not run the HOA correctly. There are things that I have asked for them to vote on, and I was flat out told no. They do not want to put it up for vote because it would be too much money to change the rules of the HOA

contract. I have been told that is not true. If you know there is a majority vote and people want to change it, then it is their responsibility to change it depending on the majority. So, he is refusing to even bring things up to a vote, so that is why I am kind of going around the back way. Mr. Petro asked if this was one of the things brought up for him to change. Ms. Roth stated not this particular one. They are supposed to have 60% of the vote. I have been there eight years now and I do not think I have ever had 60% show up to a meeting. They are supposed to shut the meeting down. I went this year and there were four of us. So, there are things like that that they are not running correctly. For the grass cutting around Wheatley's Pond, they are supposed to get three estimates and let everyone see the estimates. They have never given the estimates to anybody. When I did go the whole meeting was about the president and how he is taking people to court and getting the dues for us. Anytime we tried to talk about anything else he just kind of circled back to that. Mr. Petro stated we are discussing your application and I do not want to continue going into having more conversation around the HOA's legitimacy. That would have to be discussed either in a town session or in another forum. Ms. Roth stated I was going to bring that up to the lawyer if it gets passed through here. Mr. Kennedy asked if she had any other animals. Ms. Roth stated two dogs. Mr. Cimaglia asked if she asked her neighbors. Ms. Roth said no. They go to Jersey every summer and the other one I just see him passing. Mr. Cimaglia said do your immediate neighbors have any knowledge that you are requesting to have chickens in the yard? Mr. Petro asked if she ever had chickens before. Ms. Roth stated we did. We had them in the garage. We were told to get rid of them so we did. This was several years ago. He was like get rid of them. He did not talk to me about it. The nice new one came over and was at least willing to talk and try to help me out. He was very accommodating with that. Mr. Kennedy asked where the chicken coup is being kept. Ms. Roth stated an alcove where the garage is against the house. Mr. Petro stated chickens are messy and create waste. How do you plan to deal with that? Ms. Roth stated she has a garden and a compost pile. The bedding should be changed probably twice a week. Mr. Petro asked where the chickens will be kept in the wintertime because you said that your neighbor leaves to go to Jersey in the summer. Ms. Roth stated that neighbor is the one behind us, and they cannot even see the coup. The deck would be blocking it. The only neighbor that could see it is the one that is directly next to us. We live on the corner so there is one behind us and one next to us. My garden blocks the view of the chicken coup anyway. Mr. Petro stated in the coup 24/7 except when they are being cared for by your son. Ms. Roth stated the coop has screened in area. The coup is on top and then the screened in area is on the bottom and the chickens have access to underneath that area. We have everything that they need like a dustpan and everything for them to do dust baths, bathe in the dust to clean themselves. When we cut the grass, we have fresh lawn mowings that we throw in there for them and leaves and stuff for them in the wintertime. When there is not as much foliage, we can get calcium to help with and stones to help with digestion. Mr. Thompson said is not there such a thing as bird flu. Ms. Roth said the chicken flu. That is part of the registration with the Delaware Agriculture. When I register them, I will be under registration and if anything were to break out or anything like that, they would come and check the flock. Mr. Thompson said you have to register them. Ms. Roth stated as a backyard flock. Mr. Petro asked is it your intention to use these chickens to incubate others. Ms. Roth said no. Mr. Petro stated chickens from other people maybe? I am just reading the posts with some of the documentation here. Ms. Roth said no. I am sorry if I did not word it correctly. No these are just pets. The only thing I might do is give some eggs out to a couple of our neighbors or something. They are just pets. We are not getting more. We do like to incubate for people when they give us their eggs. Mr. Petro stated that is my question. Ms. Roth started to incubate them and give them back to them. My kids just like to watch the process of the eggs hatching and everything. Mr. Chambers stated as a chicken owner I can tell you if there is no rooster, there will not be fertilized eggs. Mr. Petro stated I think you just explained it. People give you eggs to incubate and then once they are hatched.

How long do you keep them before giving them back? Ms. Roth stated three days because you are allowed to keep them in the incubator for three days after they are hatched. Once they are hatched I am like here you are. Mr. Kennedy asked how big is it – 10 chicken coup? Ms. Roth stated because of the cage with it, and because it is like a chicken run, it is roughly four to five feet and maybe three feet wide. Mr. Chambers stated Ryan did the work up for this. I do not know if he had any comments. Ms. Lightcap stated she does. So, she explained that she currently does not have any chickens. Is that what I am understanding? Ms. Roth stated I do have chickens. If we are told no, then I have a place for them to go. Mr. Petro stated Do you currently have chickens today at your residence? Ms. Lightcap stated so that kind of defeats what we are doing here. Ms. Roth stated well like I said if they said no. Arrangements for a friend of mine that has five acres to take them. Ms. Lightcap said and then there is this. Open up a can of worms for other livestock to come into a residential neighborhood. I realize that would be on a case-by-case basis and now you are setting a precedent. Mr. Petro stated that today we are looking exclusively at this request for two chickens at this address. Mr. Chambers asked how many chickens do you currently have? Ms. Roth stated we have five but I know at least three of them are roosters and my friend said that he will take whatever I cannot have. We bought extra because there is the chance of a rooster coming in and I knew we were going to get rid of some of them. Ms. Lightcap said so the roosters are going no matter what. Mr. Petro asked does the HOA have anything in regard to having a chicken coup on your property? Ms. Roth stated I believe it says that they do not allow any kind of livestock or a coup or anything like that. Ms. Lightcap asked how would the town monitor the amount of chickens and proper caretaking of them. Mr. Petro stated the town does not have the obligation to monitor the treatment and welfare of pets. That would fall to the state and humane society and those officials. The only thing the town will do would be to either grant a variance or deny the variance on this specific case. Mr. Quackenbush stated he was code enforcement. He is the one that received this email that came into the town regarding the chickens. I have done an extensive investigation and I talked to Ms. Roth before, but he did have a question. So, we spoke about the zoning ordinance. You know the requirement and all that stuff right? When did you get this? So, you have two chickens at the house now? Ms. Roth stated we have five chickens we hatched. Mr. Quackenbush asked when did you obtain the chickens? Ms. Roth stated they hatched a month or two ago. Then we kept them inside the house until they were feathered. Mr. Quackenbush stated so it is what July 2<sup>nd</sup> so in the beginning of June. So initially this came across my desk April 8<sup>th</sup>. We discussed the zoning ordinance for the next few days and then I responded to your house on April 11<sup>th</sup> and provided you print ups and everything zoning ordinance again. So that was April 8<sup>th</sup>, April 11<sup>th</sup> followed up and provided you with the information about the zoning ordinance and all those things. So, I guess the question is if you provided the information knowing that it was against the zoning ordinance and then I provided you information requesting the hearing tonight why were the chickens obtained in June before permission was granted from the town to actually get the chickens? Ms. Roth stated the eggs were given to me. They are only viable for a certain time. I either had to incubate them or throw them away. So that is why we kept them and I waited until we got permission or not permission sorry until I got notice of the meeting. Mr. Quackenbush asked when did you get the eggs? Ms. Roth stated I think it was in March maybe. Maybe the end of March. I held on to them for a while. It takes about 28 days to hatch them. Mr. Quackenbush said so another question is why didn't you mention this to me when we spoke in April? Ms. Roth stated I did mention to you that I had eggs that I was going to hatch. Mr. Quackenbush stated there was no mention that you had eggs on the property. I document everything in my reports. So, it might have slipped? To me that is a concern. That is why I have these questions. There is a time frame here. So you were providing the information and then there is a time frame of when the eggs were actually in your possession and knowing what the ordinance is. Really my question is why would you have the eggs? You know you had to come to the hearing to get approval to

have them. Why would you have the eggs or at least say listen I have the eggs. Why would you not mention that to me or make that a priority? Ms. Roth stated I mean, I do apologize. They were gifted to me. I talked to the counselor and I was mentioning it to one of my patients and they had gifted these eggs to me. I was like well let me see what we can do. Mr. Petro stated earlier you said if there are eggs and if any of them hatched you would give them away. You would keep them in the incubator and give them away and they can only be in the incubator for three days and there would be no roosters. But you just sat there and said you have five right now and you have had them for a while and three of them are roosters. Why did you keep the roosters and the other chickens so long if you knew that you did not have the approval yet? Ms. Roth stated those eggs were given to me for my own personal use. I knew that if I was not granted permission I made other arrangements. Mr. Petro stated in your documentation you submitted there would be zero roosters but you just said you have three roosters now and you have had them for several weeks if not a couple of months. Ms. Roth stated roosters do not start growing or doing anything until probably about six months old. So, these birds are a lot younger than six months. They are only a month or so old and they are just. It is hard to tell with certain breeds of chickens if they are male or female until they get a little bit older. Mr. Petro asked when did you realize these three were roosters? Ms. Roth stated they just started showing physical traits of roosters within the last two weeks. So, I knew that they were going to be going. It depends on if I am allowed to keep the two hens. Then we will honestly turn them into soup. If I am not allowed if you guys do not give me permission the flock is going to my friend's house together. That is why I was holding off on getting rid of them because I did not know which way it was going to go. Mr. Petro said I am just wondering why you would not have gotten rid of them as soon as you identified that they were roosters because you knew you were not going to keep them. Ms. Roth stated my friend said he would like them if I was not able to keep them. He is going to take the whole coup and everything. He doesn't have any right now of his own. So, if we give him everything we are giving him the whole kit and caboodle. Mr. Kennedy stated you still have to get rid of roosters. Ms. Roth stated I know how to kill them and process them and everything. That is what I am saying if I am allowed to keep the girls, the two girls, I will kill them, process them, and turn them into food. So, the whole thing is going to the friend, not just the three roosters. If I am allowed to keep them, the three roosters will be processed and turned into chicken noodle soup. But if I am not allowed the whole thing will go to my friend's house. He wants the roosters because he has five acres. He is going to let them free range and roosters are good for protecting. Mr. Quackenbush stated he did have one more question. Ms. Roth I am just trying to clarify because there is some mixed information that I have so I want to make sure it is clear. There is some social media that was brought to my attention. On the Smyrna Clayton Residence page was Tabitha Deery Roth, is that you? Ms. Roth stated yes. Mr. Quackenbush stated one of the things that I had found on this page, I am just trying to confirm, a little bit ago you said that you had a couple of eggs. I think it was five eggs at the end of March. So, at the end of March, you had a couple of these eggs, but in one of these social media public posts it says from you and I am quoting here "we have two incubators". First question "Is there anyone who has fertilized chicken eggs that wants them hatched? We have two incubators and one kid love watching them hatch." We get that. But if you already had five eggs at the end of March why would you be asking on a public post if anyone had fertilized eggs that they wanted hatched? If you already had five fertilized eggs would you not already have them to offer? Ms. Roth stated again I knew those were for us. I am talking about like I have done like 100 eggs at one point. I like to just incubate them and give them back to the farmer or whoever gave them to me. The incubator only holds 36 at a time. So that is why I was asking if anybody wanted any incubated. Mr. Quackenbush stated I don't know much about them that is why I am asking. Mr. Kennedy stated we are all on a learning curve here. Ms. Roth stated she does not have a problem educating. Again, the kids get excited. It is a whole process throughout the whole process of the

incubation. You can actually take a light and shine it into the egg and watch the egg develop into a chicken. So, the kids like doing all that and learning all that. If a farmer does not have a broody hen, which is a hen that sits on a clutch of eggs and hatches them naturally and they do not have the time to do the incubator thing you know that is where I come in and do the work around. Mr. Petro asked Do you do that as a side income? Ms. Roth stated no I do not charge anything. It is just a hobby.

Mr. Petro asked if any in the audience had anything to say and announce who you are. I am Zachary Petro. I am a graduate of First State Military Academy. I brought handouts. Zachary stated one of his biggest issues with allowing these chickens is its closeness to Wheatley's Pond as a body of water because chicken waste is high in a lot of what they call agrochemicals which is forever chemicals which live in your body and things like nitrates and atrazine. They can lead to pediatric cancer and they have been linked especially as you grow. Different types of cancer are being located. If you look at the map below 690 feet away which is about a little less than 1.3 miles away from this body of water and these things form. Chicken poop and stuff when it rains can get pushed from the watershed of the water in there. Then there is wildlife that drinks from there. There are fish in there. There is a dam on Wheatley's Pond that flows down underneath the road and then it goes into the ground and everything there. There is Clayton Elementary right there so there are a lot of children around. If you flip to the back of your paper it goes into the seizures. So, there is avian influenza which is the avian flu. Children, especially those who have not been vaccinated for it can have really bad cases especially younger kids like we would see at Clayton Elementary. Illnesses like laryngitis and chorizo, which is more known as whooping cough. Although they are not directly transferrable to humans, they can pose health risks to the immune system because your body can still be fighting them even though they cannot make you directly from the chickens. I went into legal consideration there, so laws that protect service animals are the things that allow them to be on planes and in public places. There is nothing in Delaware or federal law saying that emotional support animals have to be afforded these rights except for the Fair Housing Act which applies to landlords only which is when there is a no pet policy or things like that. So, they have to give them reasonable accommodations for these pets. But there is nothing that truly says well a reasonable accommodation is and it is even unclear if a chicken should be. Chickens especially around roosters and stuff can get very mean and not want to be their part of a family, be around people. Then he went into the setting the precedent thing. So, if right now they are considered livestock or a farm animal, and if we allow does this allow other people you know they want a cow, now they want a lamb, they want a sheep, they want goats, pigs things like that as their emotional support animal. Those animals are bigger, they create more waste, more noise, more smells coming into the town. Allowing this would set that precedent of non-traditional pets being allowed to have emotional support animals in town property. I even put on alternative solutions down at the bottom of the page. There are things like guinea pigs, birds, dogs, cats that can be there to emotionally support someone especially if you get them as babies they do the same thing as chickens can do as you go through those growing steps and see it grow up. If you guys want to look again, here are my sources on the last page.

Mr. Petro asked if anyone else had something to say. Mr. Quackenbush stated he had something to add if he could. Mr. Quackenbush told Zachary nice presentation. Ms. Roth stated even though you are against me, it was a nice presentation. I am just curious. Was the extra phosphorous for two chickens or was that for multiples of chickens? Zachary stated the way you have to look at is if we allow you to have chickens, then someone else can ask for chickens and then that just continues to grow and then that adds to all the nitrates and phosphate and everything getting into our already very fragile ecosystem. When you look at farmers they have to take into account all the chemicals and could then offset that in a way to

make their carbon neutral. Those things can be hard for the environment to bring it back up to the same level. Ms. Roth stated are you aware that the farm next to us has chickens and they have a large farm. Zachary stated they are zoned differently. They still have that responsibility to offset that.

Mr. Quackenbush stated he had another question. So just going back to the social media thing. I am going from some of the notes that I have and some of the print ups from the Smyrna Clayton Residents social media pages we already talked about. The first one was having the incubators and the eggs. The other question I have and Scott you let me know if I am stepping over anything here, so one of the print ups on Facebook there is a group talking about backyard chickens in Kent County. One of your posts Ms. Roth it says my kids want chickens. Does anyone know how to legally be allowed to have chickens in the Town of Clayton? We had three, four and got told to get rid of them. You stated in here we do not need or want a rooster but love the eggs. Does that sound familiar? Then below that it says LMAO is there a thing for emotional support chickens. So, is it accurate that LMAO is laughing my ass off? Ms. Roth stated yeah. Mr. Quackenbush said is it fair to say that I would not think that an emotional support animal is not a laughing matter right? Ms. Roth stated she does not remember the rest of the comments. The comments were going back and forth. There was a banter going back and forth and everything and at that point. This is where that comes in. My son's doctor and him have talked about it and he said he really liked having the chickens. I did not want to put his personal information out there. Mr. Quackenbush stated on the other post you have, and just let me know if this does not sound like, it is dated April 8<sup>th</sup>. There is a screenshot that you put on and says an organization called Register my Service Animal LLC is either emotional support animals or therapy animals. Does that sound accurate? Doing our investigation as I do I went to the website to see how this whole thing operates. There really was not a clear way to put me in touch with these specific people. The reason I say that is because we have all these different social media posts on April 8<sup>th</sup> and then when you submit the letter from the mental health professional to the town. Do you remember? Ms. Roth stated I can give you. I am looking it up. I can tell you exactly the date. Mr. Quackenbush stated he could tell you from our record, from my email records, I received the letter on April 9<sup>th</sup>. Ms. Roth stated April 8<sup>th</sup>, April 9<sup>th</sup>. Mr. Quackenbush stated he received a letter on April 9<sup>th</sup> and this is all around the same time period. Just the day before is when these posts were on. Public posts are on social media, essentially you know laughing about is there a thing about emotional support chickens. So, my mind as an investigator is legitimate. This is what I want to do, not sure if I can do it, is there a legal way? All sorts of things pop up. So that is why I am asking did these things sound right to you like these Facebook posts sound right to you? Ms. Roth responded understood yeah. Mr. Quackenbush asked does anything sound out of order or no? No okay. Ms. Roth stated again this was something that was brought up probably the end of March by my friend's counselor. He had offered to write the letter himself and I said I did not want my son's name and so I was trying to figure out how I could get a letter for myself. Then I expressed it to my counselor and she was like oh well you know they have this and I am a part of this. Mr. Petro stated he wanted to ask Mr. Quackenbush a question. Mr. Petro stated earlier you said that you had two interactions with Ms. Roth and you stated the dates and I wrote them down. I want to make sure I wrote them down correctly. You said April 8<sup>th</sup> and then you went and did a site visit on April 11<sup>th</sup>. Is that correct? Mr. Quackenbush responded yes. Mr. Petro stated and that corresponds to the same time that you just sat there and said that the posts were made or the post made after. Ryan reached out to you about not being allowed to have chickens in town in the zoning ordinance. Ms. Roth responded before. Mr. Petro stated may I ask since you have the documentation on April 8<sup>th</sup> you sent an email or phone call. You got a voicemail from Ms. Roth to you? Mr. Quackenbush stated yes to the town. And then the email was received on April 9<sup>th</sup>. Mr. Petro stated so the posts and everything were prior to talking to or engaging with the town. Mr. Quackenbush stated

right. So, from my notes, April 8<sup>th</sup> the town received a voicemail from Ms. Roth stating that she received a letter from her doctor regarding emotional support animals. Mr. Petro responded thank you. I just wanted to understand the timeline.

Mr. Petro asked if anybody in the audience had any questions or comments. Mr. Kennedy asked how the storm drainage is done in that development, whether it goes to Wheatley's Pond. Mr. Quackenbush stated that should be a Public Works question.

Mr. Petro stated he would entertain motion.

***Mr. Kennedy stated he would like to make a motion to vote on the petition for variance for Ms. Roth. Mr. Cimaglia seconded the motion.***

Mr. Petro stated to Mrs. Muncey that he would like to have a roll call vote. Mr. Cimaglia stated can you clarify what the call should be for or against. Mr. Petro stated that the motion will be to vote either for to approve the variance as it is written and requested or a vote against it to deny the petition for variance as written.

***Mr. Thompson stated he was reading under Section 6.4-4.7. May I read it? This section permits a home occupation as a necessary use. If it is compatible with the residential character of the neighborhood in which it is located and is conducted so as not to disturb or cause discomfort or annoyance to any reasonable person of normal sensitivity residing in the area. So, on the basis of maybe becoming a nuisance or sensitivity to others, I think I would have to vote no.***

***Mr. Cimaglia stated I am going to vote against it as well. While I feel Ms. Roth is doing her due diligence to not cause any issues, angst, or anything like that, I do think the HOA stands out to me a little bit. They are in place for a reason. When going into those developments you signed that agreement which includes a lot of this information about what you can and cannot do. So that is a big fact – the fact that they did not approve it. Hearing from them if they did might have done something a little different. But I think that is a big part of it. Also Mr. Quackenbush's testimony. The evidence presented having the knowledge of that ordinance and still having chickens. I do not think that does a lot for me in terms of trying to adhere to the procedures. I think Ms. Roth did due diligence to make sure it is safe and a good environment for your family. I do think the environment, the noise, the neighbors, all come into play here. I think it is really difficult for me to vote for. So, as I said I will vote against.***

***Mr. Kennedy stated great job. You seem to have a great plan together. Unfortunately, nothing in the petition says that. What I am really worried about is that there are variance standards. Chickens – it is not two hens. That kind of really bothers me. I am going to have to say no. It would have to be a lot more detailed as to what we are allowing change in the zoning laws for the area.***

***Mr. Petro stated he would also vote no mainly because in your documentation you indicated that you will only keep hens and no roosters. You identified that you have had at least three roosters and that you have known that they have been roosters for a while. I understand that***

*you wanted to give either the whole flock away or call them. If that was the case, I believe you would have either given the roosters away already or you would have called them as soon as you identified them as roosters. So, I do not believe you are keeping to what you have been asked already or what you have been asking for already. So, I am voting no.*

*Mr. Cimaglia made a motion to adjourn. Mr. Kennedy seconded the motion. Motion made unanimously. Meeting adjourned at 8:02 p.m.*

Recording Secretary,

Sue Muncey