

**VILLAGE OF WALDEN:
ZONING BOARD OF APPEALS**

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In the matter of the application of:

HERBERT GARCIA

for a use variance to keep and raise livestock in a single family zoning district where such uses are not permitted.

**FINDINGS OF FACT
AND DECISION**

**TAX MAP NO.
310-4-7.1**

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The property which is the subject of this application is located at 6 Edmunds Lane, Walden, New York and is designated on the Village Tax Map as Section 310, Block 4, Lot 7.1. It is located in an R-4 (Single Family) Zoning District.

A public hearing on the application was scheduled for April 1, 2010 at the Village Offices, One Municipal Square, Walden, New York. Notice of said public hearing, including the subject, date, place and time, was duly published and mailed. Proper affidavits of publication and mailing have been received from the applicant.

The public hearing was held on April 1, 2010. The applicant, Herbert Garcia, appeared in person. The testimony at the Public Hearing established that the property in question is approximately 1.74 acres in size. On August 8, 2008, the applicant transferred title to the property to his daughter, Tammy Garcia, as Trustee of the Herbert Garcia Irrevocable Trust. In November, 2009, the applicant acquired a lamb, essentially to prevent it from being slaughtered for food, and has kept in on the property. In December, 2009, the applicant acquired a second lamb, for essentially the same reasons as the first, and has kept it on the property. The applicant maintains that the lambs are treated as domestic pets and are not being kept as livestock. When the applicant went to acquire a building permit so as to erect a fence in the rear yard to keep the lambs, the Building Inspector informed him that lambs are considered livestock and not domestic pets and that he must remove them from the property. This appeal ensued.

Upon questioning, the applicant stated that he was unaware of the requirements for a use variance. When the requirements were explained to him, he conceded that he could not satisfy several of those requirements. The applicant's daughter stated that she had consulted with Cornell Cooperative Extension and

that persons of that organization stated that 1.74 acres was more than enough property to keep two lambs. The Board noted that the size of the property

is not relevant to the use of the property and that permitting lambs to be raised in a residential district is no different than raising sheep, cows or horses. The applicant was asked if he had tried to find a suitable farm that would take the lambs and not slaughter them and he said that he had not looked for one.

The Board heard from several individuals some in favor and some against the application. At least two of the immediate neighbors stated that the lambs chased them and their children, and another stated that while he saw no harm in the animals themselves that he was concerned about the ability to market his home in the future if farm animals were allowed across the street.

The Board closed the public hearing but delayed a decision as some of the members wanted to visit the property.

The Board determines that this is an application for a use variance. The criteria which the Board must consider in determining whether or not to grant the use variance is the standard set forth in Village Law, Section 7-712-b(2). The Board has considered the following factors and has made the findings set forth below:

I. WHETHER UNDER APPLICABLE ZONING REGULATIONS THE APPLICANT CANNOT REALIZE A REASONABLE FROM THE PROPERTY IN QUESTION?

The Board determines that the applicant has failed to prove that he cannot realize a reasonable return on the property without the need for a variance. The applicant owns a single-family home on 1.74 acres in a single-family residential zoning district. The keeping of livestock is not permitted in the zoning district and the Board does not consider lambs domestic pets. Thus, the applicant must prove that he cannot realize a reasonable return on his property without allowing him to keep livestock on the premises. No "dollars and cents" proof was presented by the applicant and he conceded that he could not make such a statement or provide such proof.

II WHETHER THE ALLEGED HARDSHIP IS UNIQUE, AND DOES NOT APPLY TO A SUBSTANTIAL PORTION OF THE DISTRICT OR NEIGHBORHOOD?

The Board determines that the applicant's hardship is not unique. The applicant's property is located in a single-family residential district. The keeping of livestock is not permitted and lambs clearly constitute livestock by any definition of the term. To allow even this slight exception could result in other applicants

seeking to allow other species of livestock to be kept in residential zones.

III. WHETHER THE REQUESTED USE VARIANCE, IF GRANTED, WILL ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD?

The property is located in a single-family residential district. Immediate neighbors of the applicant questioned the need for the keeping of livestock on his property and the potential detrimental aspects it could have on their property values. The neighbors complained of the animals running loose, their smell and their waste. Under these circumstances, the Board determines that the granting of the variance would alter the essential character of the neighborhood.

IV. WHETHER THE ALLEGED HARDSHIP HAS BEEN SELF-CREATED?

The Board determines that the applicant's hardship is self-created. The applicant took the lambs onto his property without investigating the zoning law and its prohibitions. While the Board is sympathetic to the applicant's altruistic motives, it does not believe that the keeping of livestock in a residential zone is in the best interests of anyone.

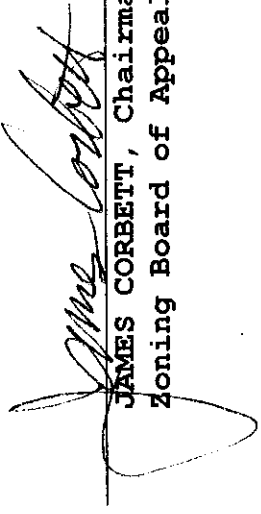
DECISION

The Board determines that the requested variance to Section 148-10 of the Village Code to permit the keeping of livestock on property in a single-family zoning district is denied.

Present and Voting on this resolution to deny the requested variance:

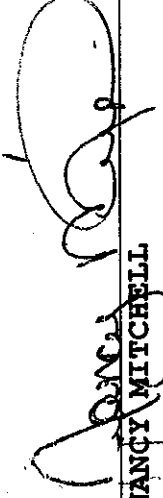
James Corbett,	Aye
David Ohlmer,	Aye
Brenda Adams,	Aye
Marisol Duran	Absent
Jason Trafton	Aye

Dated: Walden, New York
May 17, 2010



JAMES CORBETT, Chairman
Zoning Board of Appeals

Filed in the Village Clerk's Office this 19 day of May,
2010.



NANCY MITCHELL
VILLAGE CLERK