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# Not enough votes for egg co-op owner; variance still required

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GENEVA — With only five of its seven members present, the city Zoning Board of Appeals voted 3-2 Tuesday to not require Jeff Henderson to seek an area variance for his egg cooperative and solar panel project at 50 State St.

But four votes were needed, so the motion failed. Henderson is required to seek the variance.

Voting to not require the variance and let the

project proceed based on Planning Board and code enforcement approvals were ZBA members Robert Stewart, Nicholas Gillotti and James Richmond.

Voting no were Joseph Commesso and Andrew Williams.

Member Robert Meyer was absent and new member Ellis Bozzolo has excused himself from the Henderson issue because of his personal involvement and opposition as a neighbor.

Later, a disappointed Henderson said he feared his project, which he has invested considerable money in, “will go away.”

“I’m not sure if I will seek a variance. I have to think about it and talk to my attorney,” he said.

Williams and Commesso declined to comment on why they voted no.

A no vote means they feel Henderson should be required to seek a variance from the 100-foot buffer zone required in the city zoning ordinance for industrially zoned property bordered by residential zones.

Henderson was seeking a ruling from the ZBA on his contention that the city wrongly required him to get the variance.

The meeting began with Stewart, as chairman, asking Williams, who missed the January meeting when



**Henderson**

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the matter was first discussed and tabled, if he was sufficiently informed of the issues to vote. Williams said he was.

Henderson made a statement, asking for a fair application of city zoning laws, noting no other permitted industrial users have been asked to obtain an area variance.

"This goes beyond allowed uses of the property. It's like a taking of my property. I pay taxes on it. I've taken care of it. The blight has been removed. It's productive and part of the community," Henderson said. "I ask that you abide by the previous decision that I can proceed."

His lawyer, Philip Bailey of Penn Yan, distributed a map and said that if the 100-foot buffer is enforced, "there is nothing left for anything that is allowed to be done. It covers the complete parcel."

Stewart asked Henderson why seeking a variance was not a viable option for relief from the buffer requirement.

"If you could guarantee he would be granted the variance is one thing. You can't do that without going through the process," Bailey said. "If he is denied, it is a taking of his property by the city because it's useless to him, despite his investment."

Bailey asked the ZBA to make an interpretation of the code and look at the map.

Stewart disagreed, saying Henderson can "get to where he wants to go" with a variance.

"I'd like to do it quicker and more efficiently. I'd like to avoid going to Supreme Court if there is a denial," Bailey said.

Comness said Henderson could build a house on the parcel. But Stewart said that is not allowed in an industrial zone, and even if it was, it would be subject to the buffer requirements and there would be no place to put the house.

"I don't think the city wants to take this property and make it unusable," Richmond said. "If Mr. Henderson had known about this when he bought it, he might not have bought it. But he

wasn't told."

Gillotti said Henderson bought the parcel in good faith, went to the Planning Board and got approval in good faith, went to the codes department and was told he didn't need to go to the ZBA, again in good faith.

"He did what he was supposed to do. I'm not for farm animals in the city and we have to consider how chickens would affect people as well as what's right for Jeff," Gillotti said.

"Personally, I don't want this to come before us again," he said, calling it "an unusual circumstance" that he's never seen before.

Henderson said once he got Planning Board approval, he put up the solar panels, which have not been connected to the electrical grid, installed the chicken coop, bought 21 hens and put up fencing, as well as cleaned up the property.

"If I appeal for a variance and am denied, I have to take all that down," he said, noting that there are "parcels all over the city that violate the buffer zone."

During public comment, Mary Lou Cannuli of Exchange and State streets said she doesn't object to the solar panels.

"I resent chickens in a residential neighborhood, close to church and a proposed senior citizen apartments. There will be smells and our rights should be considered. Chickens do not belong in the city," she said.

Stewart reminded her that chickens are a permitted use in the zone, so the issue is the buffer requirements.

Henderson said the chickens have been on the site for eight months and there have been no problems. Stewart said he checked with the police, fire and code departments and no complaints have been filed about the hens.

Gillotti motioned to overturn the city's requirement that Henderson needs to seek a variance. It was seconded by Richmond.

During discussion, Henderson said it is his responsibility to deal with odor, noise or other complaints. He said he doesn't think he will have more than the current number of hens.