

- ~~9. The temporary sales trailer must meet all City Codes and Ordinances reasonably related to temporary sales trailers and includes ramps and other necessary items.~~
10. The temporary sales trailer will be skirted in its entirety.

Roll Call Vote:

Ayes: Brennan, Weisberger, Robbins, Cockey, Colling, Rosen
Nays: None
Absent: Verschueren

MOTION CARRIED

Chairperson Cockey noted the applicant's request for a temporary sales trailer permit had been granted.

7. PUBLIC HEARING – FILE #04-001

Location: 994 Maidstone Drive, located in the Easthampton Subdivision, west of John R and south of Hamlin Road, Parcel Number 15-26-228-001, zoned R-4 (One Family Residential).

Request: A variance from Section 138-1073(a)(3), to allow the keeping of poultry (ducks) on a lot lesser in size than one (1) acre. Section 138-1073(a)(3) permits the keeping of poultry, if there are no more than twelve and the parcel or lot is in excess of one acre.

Applicant: Jing Pang
994 Maidstone Drive
Rochester Hills, Michigan 48307

Jing Pang, 994 Maidstone Drive, stated she resided in the Easthampton Subdivision, and explained she was before the Board to request a variance from Section 138-1073(a)(3), which prohibits poultry on lots less than one (1) acre in size. She stated she kept two (2) ducks as pets, and they were not being raised as poultry.

Ms. Pang explained her family had owned the ducks since they were ducklings, they had built a house and a pond for the ducks, and they tried to keep their yard in good shape. She stated the ducks ate grubs, which had helped to eliminate the moles in her yard. She stated her yard was the first yard in the subdivision, and anything that came across the street, came to her yard first, which caused her some concern. She indicated she had tried many ways to eliminate the moles; however, it was not until the ducks grew up and began eating the grubs, that the moles went away. She stated she felt the ducks also helped fertilize the grass.

Ms. Pang stated she had not heard any complaints from her neighbors, but indicated if the neighbors had complaints, she would like to be allowed to install a fence to keep the ducks contained in her yard.

Chairperson Cockey asked whether Staff had a summary report to present. Mr. McLocklin advised the Board that the Building Department had been notified by the

Easthampton Subdivision Homeowners Association that two (2) complaints had been received regarding the ducks on the site, which is how the applicant's request originated.

Chairperson Cockey opened the **Public Hearing** at 7:50 PM, calling for proponents and/or opponents who wished to speak. It was noted no telephone calls or correspondence had been received by Staff regarding this request.

Allen Schneck, 933 Norcross, stated he was a member of the Easthampton Homeowners Association, and resided in the Easthampton Subdivision. He noted two (2) additional members from the Homeowners Association were present. He stated this issue was raised by another board member of the Association, noting the City Ordinance was not being followed as far as having livestock on a parcel less than one (1) acre in size.

Mr. Schneck stated there had been resident concerns that the animals roamed, as they were not the typical dog or cat that could be put on a leash or where an invisible fence could be installed to keep them within the yard. He explained the subdivision's deed restrictions prohibited fences in the neighborhood, unless a resident had an in-ground pool. He explained in that instance, the fence was required to be a decorative, powder-aluminum type of fence. He noted the deed restrictions also prohibited any type of outhouses, such as sheds or barns. He stated the ducks were housed outside in a coop. He indicated there was also the concern of unsanitary conditions, noting some of the residents whose lots back up to the applicant's property had complained about the ducks on their patios. He stated one (1) of those residents had a newborn and was concerned about the ramifications of the unsanitary conditions if their child was on the patio or the grass and picked something up and ate it.

Mr. Schneck stated the residents had the assumption when they moved into the subdivision that the City Ordinances would be followed. He felt everyone had a right to a certain quality of life.

Mr. Bryan Smith, 2093 Wentworth, stated he resided on the opposite corner from the applicant's property, and was a homeowner in the subdivision, although he was not a member of the Association. He believed it was not in the best interest of the subdivision to allow animals such as the ducks. He expressed concern that if a variance for the ducks was granted, then other poultry or animals, such as chickens, pheasants or rabbits, would have to be allowed. He stated he objected to the issuance of the requested variance.

Chairperson Cockey closed the **Public Hearing** at 7:54 PM, and called for discussion by the Board.

Mr. Colling stated he would like to make it clear to the applicant that her request was for a use variance. He explained the conditions for a use variance set forth in the Code of Ordinances under Section 138-113 (Use Variance) stated:

- The property in question cannot be reasonably used or cannot yield a reasonable return on a prudent investment if the property would be used only for a purpose allowed in the zoning district;
- The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions;
- The use to be authorized by the variance will not alter the essential character of the area and locality;
- The problem is not self-created;
- The spirit of this chapter will be observed, public safety and welfare secured, and substantial justice done;
- There is compliance with the standards set forth in subsection 138-109(c), and
- There is compliance with the standards for discretionary decisions as contained in subsection 138-1306(d) of this chapter.

Mr. Colling stated it was not that the Board wanted to consider whether ducks were pets or not, but rather the Ordinance spelled that out very clearly. He indicated the applicant's request was for a use variance, which had to meet the conditions he just noted. He stated he wanted to clarify that the applicant understood her request before the Board.

Ms. Pang stated she understood.

Mr. Brennan stated he wanted to clarify why the applicant wanted to keep the ducks. Ms. Pang responded it was because they had raised them from ducklings, and her family, consisting of her two boys and their grandmother, would be so regretful if the ducks had to go. She stated they had cared for the ducks for many months, and it would be very hard for them to lose the ducks.

Mr. Brennan asked the applicant who was in her family. Ms. Pang stated she had two (2) sons, and her mother resided with them.

Mr. Brennan clarified the applicant considered the ducks as pets. Ms. Pang responded yes. Mr. Brennan asked how long the applicant had owned the ducks. Ms. Pang stated they have had the ducks since May, 2003.

Mr. Brennan asked the applicant where she obtained the ducks. Ms. Pang explained a friend had a high school science project to hatch the eggs. When the ducks hatched, the friend gave the ducklings to her family.

Mr. Brennan asked if the ducks had names. Ms. Pang stated her boys had names for the ducks, but they were Chinese names and the Board would not understand them. Mr. Brennan asked if the applicant could provide the names for the record, since the family considered the ducks as pets. Ms. Pang stated one was called "pong pong" (phonetic spelling) and one was called "sho sho" (phonetic spelling). Mr. Brennan asked if the applicant could spell the names. Ms. Pang stated young kids in China were called by nice nicknames, which were similar to these names.

Mr. Brennan asked the applicant the age of her sons. Ms. Pang stated one son was ten (10) years old, and one was twelve (12) years old. Mr. Brennan asked who in the family took care of the ducks. Ms. Pang stated the whole family took care of them.

Mr. Brennan asked the applicant if there were any other reasons why she wanted to keep the ducks. Ms. Pang stated the main reason was it would be too hard to get rid of them. She explained until she received notification from the City, she did not know there was a rule restricting poultry from the yard. She stated the second reason was because they had already planned everything for the ducks, such as an in-ground pond, and a small shed or house for them.

Mr. Brennan clarified the applicant intended to build a pond for the ducks. Ms. Pang explained they had already built a pond.

Mr. Brennan asked if the ducks remained outside all the time. Ms. Pang stated the ducks did stay outside, and they had built a small house for them. She explained during the night, the ducks were in their own house.

Mr. Brennan asked if the applicant had ever taken the ducks to a veterinarian. Ms. Pang replied she had not. Mr. Brennan inquired whether the applicant knew if the ducks were male or female. Ms. Pang stated both ducks were male. Mr. Brennan noted the applicant had indicated in the attachments to her application that she was not sure the ducks were both male. Ms. Pang explained at that time she was not sure, but her friend had told her he was One Hundred (100%) Percent sure they were males, and she believed her friend.

Mr. Brennan noted the applicant had specified one reason for keeping the ducks was that they were pets, and asked if the applicant had any other reasons. Ms. Pang stated the main reason was because it would be too hard to get rid of them, because they had raised them.

Mr. Brennan questioned whether the ducks were intended for consumption. Ms. Pang responded "no way". Mr. Brennan clarified the ducks were not being raised for food. Ms. Pang responded "no".

Mr. Brennan asked if there was any other reason the applicant wanted to keep the ducks. Ms. Pang indicated there was not. Mr. Brennan inquired whether the applicant intended to obtain more ducks. Ms. Pang stated no, as she did not have a big enough yard for more ducks.

Mr. Brennan noted that some of the applicant's neighbors had mentioned complaints they had about the ducks. Ms. Pang stated she had heard those comments.

Mr. Brennan referred to the issue that the ducks roamed around and did not stay on the applicant's property. Ms. Pang stated if there was a need, she would put a fence around her yard to keep the ducks out of the neighbors' yards. She explained when she moved into the subdivision, there were no By-Laws, so she did not know about the restrictions regarding fences. She stated if the subdivision has requirements regarding the type of fence, she would follow those requirements.

Mr. Brennan noted it had been stated that the subdivision did not allow fences. Ms. Pang stated she had not understood that because when she moved in, there were no By-Laws for the subdivision, and she was not informed about any restrictions for the subdivision.

Mr. Brennan referred to the picture submitted by the applicant with her application, and asked about the wall depicted therein. Ms. Pang explained the wall backed up to the street. Mr. Brennan clarified there was a street behind the wall. Ms. Pang stated that was correct.

Mr. Brennan clarified there were no fences along the side of the applicant's property. Ms. Pang indicated there were not.

Mr. Brennan asked if any of the residents in the audience were neighbors of the applicant. Ms. Pang stated they were not. Mr. Brennan asked if the applicant had any knowledge of her neighbors complaining about the ducks. Ms. Pang replied "no". She stated the residents at this meeting had referred to a neighbor having a new baby. She said some neighbors had come to her yard and looked at the ducks and seemed pleased to see them. She indicated she did not know the neighbors had complained, as they had not talked to her. She stated the neighbors might have become concerned because of the birth of the baby, which she felt was a reasonable concern. She indicated she would do what she could to keep the ducks from going to their yard, stating she could install a fence around her yard.

Mr. Brennan stated one of the residents had commented about unsanitary conditions. Ms. Pang responded she kept the ducks very clean. Mr. Brennan inquired how the applicant kept them clean. Ms. Pang explained the ducks had water, and ducks usually kept themselves very clean. She stated if there was any discharge on the ground, she usually washed it away right way. She explained in the summer time, the grass was watered all time, and when they saw any discharge, they washed it away. She stated last summer the ducks were still ducklings, and she had built a small house for them next to her house next to the patio, and she had a small water pan there, and they did not cause any problems.

Mr. Brennan clarified the applicant did not believe there was a problem with sanitation. Ms. Pang stated she did not think so.

Mr. Brennan asked whether the applicant was from China. Ms. Pang responded yes. Mr. Brennan inquired whether it was normal in China to have ducks as pets. Ms. Pang responded no, that she had never owned ducks before. Mr. Brennan explained he was trying to understand if this was a cultural issue. Ms. Pang explained her friend had brought the two ducklings to her house because her friend felt her sons might like to raise them. She stated they had used the Internet to learn as much as they could about ducks, and tried to do everything necessary for the ducks.

Mr. Robbins asked if anyone could explain the difference between a pet duck and a wild duck. Mr. Colling stated the difference between a wild duck and pet duck or a domestic duck was breeding. He explained that wild ducks are generally migratory in nature, heading south for the winter. He indicated a domestic duck would not last in the outside world, but had to be fed and cared for. He stated it appeared the applicant's ducks were probably Muscovy, noting he had raised ducks when he resided on a farm.

Mr. Robbins noted there was a retention or drainage pond on the corner of John R and Hamlin, and questioned the difference in ducks taking up residence at that pond, or landing in a person's backyard and taking up residence there for the summer. Mr. Colling responded in terms of the issues of sanitation and wandering through yards, probably very little.

Mr. Robbins stated there was a question about how this issue would be different from ducks that just happened to be there.

Mr. Rosen asked if Staff had received any complaints about noise. Mr. McLocklin indicated there had not been any complaints about noise. Mr. Rosen asked the applicant if the ducks quacked or made noise during the day. Ms. Pang stated the ducks were very silent. She stated when the ducks were young they encountered some dogs and became scared and very noisy. She explained they ran out to separate them, and that was the only time anyone heard the ducks. She stated the ducks learned never to chase the dogs again.

Mr. Rosen asked whether the ducks ate grass. Ms. Pang stated the ducks ate the grubs in the grass. Mr. Rosen clarified the applicant had stated the ducks fertilized the grass. Ms. Pang stated that was what she guessed. Mr. Rosen inquired whether the applicant cleaned up the duck feces. Ms. Pang stated she could not. She explained if there was discharge on the pathway, she used water to wash it away to the grass. Mr. Rosen clarified the applicant was not maintaining sanitary conditions, but rather just washed it away. Ms. Pang stated the discharge could not really be picked up, noting it was different from a solid type of discharge. Mr. Rosen noted for public health reasons it was not different. Mr. Colling stated this breed of duck was more like a bird, and the discharge was more like droppings from a wild bird. He explained a goose was a different matter.

Mr. Rosen stated it was his experience, having worked at the GM Tech Center in Warren, Michigan, that ducks and geese were messy and unpleasant.

Chairperson Cockey commented about the need to separate geese and ducks, noting that would be similar to comparing cats and dogs. Mr. Colling stated ducks were generally less intrusive in nature, noting they did not attack around the nest and were not territorial like geese. He stated unlike a dog or cat that can be picked up after, the nature of duck physiology was that their droppings were like a wild bird and dissolved in water.

Ms. Pang stated there was a big difference between wild ducks and domestic. She explained wild ducks could fly and freely go anywhere, whereas domestic ducks cannot fly and stay within a certain distance. She stated her ducks do go into the neighbor's yards because there is no separation to stop them. She noted if there were a separation, it would stop the ducks because they cannot fly.

Mr. Colling referred to the public comments that mentioned other animals, such as rabbits. He noted the Ordinance did not specifically mention rabbits, ferrets or other things of that nature, and those animals would probably be considered common household pets today, much like lizards, snakes or tarantulas. He indicated the Ordinance did, however, specifically define a duck as poultry. He noted although the applicant's ducks were domestic ducks, and there were other extenuating circumstances, the Ordinance specifically prohibits keeping poultry with less than one (1) acre of land. He pointed out the Ordinance did not differentiate between domestic or wild ducks, or pets or non-pets. He referred to the specifications regarding a use variance, and noted there did not appear to be any criteria that the applicant met to be granted a variance. He indicated the problem was self-created, because the applicant had acquired the ducklings, and there were no other unique circumstances, other than the fact the applicant would like the Board to consider the ducks as pets. He stated barring City Council changing the Ordinance, he would not be able to consider granting a use variance in this case.

Mr. Colling stated the applicant had referred to fencing her yard and building a pen for the ducks, and questioned whether the applicant understood at the time she purchased her home, that she was entering into a homeowners association. Ms. Pang responded "no".

Mr. Colling noted the applicant was involved in a homeowner's association, subject to deed restrictions. He stated it was his understanding the deed restrictions in the applicant's subdivision did not allow fences, sheds or outbuildings of any kind. He noted unless the applicant kept the ducks in the house, he was unsure what she would do with them.

Ms. Pang stated families were allowed to keep their pets, and noted there was no definition that stated ducks were not pets. She indicated the ducks were her family's pets. She stated when she moved into the subdivision, she asked about By-Laws and was informed there were no By-Laws or other specifications for living in the subdivision. She stated the comments made at this meeting about the restrictions regarding fences were totally new to her.

Mr. Colling asked if Staff could verify that the applicant's property was subject to the subdivision homeowner's association and deed restrictions. Mr. McLocklin indicated he did not have knowledge of that at this time.

Mr. Colling indicated the Board would assume the applicant's property was subject to those conditions, and asked if a representative from the homeowner's association could answer a few questions. **Mr. Allen Schneck** came forward.

Mr. Colling verified that **Mr. Schneck** was a duly elected member of the homeowner's association. **Mr. Schneck** responded he was. Mr. Colling asked if **Mr. Schneck** could vouch for the fact that the applicant's property was part of the homeowner's association, whether she was an active member or not. **Mr. Schneck** stated the applicant had paid her dues last year.

Mr. Colling asked if the homeowner's association was part of a deed restriction or covenant entered into at the time of purchase. **Mr. Schneck** stated it was. Mr. Colling asked if it was correct that the homeowner's association did not allow fences, sheds or outbuildings of any kind. **Mr. Schneck** stated that was correct.

Mr. Colling noted a dog was considered a common household pet, and asked if the homeowner's association would object to a doghouse being built in a backyard, no matter how small it was. **Mr. Schneck** responded "yes".

Mr. Robbins asked **Mr. Schneck** to provide his address for the record. **Mr. Schneck** stated his address was 933 Norcross.

Mr. Robbins asked if the homeowner's association allowed shrubs or landscaping of any kind. **Mr. Schneck** stated they did. Mr. Robbins asked if a hedgerow could be planted instead of a fence. **Mr. Schneck** indicated he guessed that could be done.

Mr. Robbins inquired whether there were By-Laws for the association, other than the deed restrictions. **Mr. Schneck** explained the restrictions were developed by the developer, noting when Ninety-five (95%) Percent of the homes were built, they were turned over to the homeowner's association to enforce. He indicated the homeowner's association was charged with the obligation to enforce the restrictions for twenty-five (25) years, and the deed restrictions were registered with the County.

Mr. Robbins clarified the homeowner's association did not have additional By-Laws, other than what was incorporated in the deed restrictions. **Mr. Schneck** indicated they did not.

Mr. Robbins verified none of the residents of the subdivisions had doghouses or other types of outbuildings on their property. **Mr. Schneck** responded they did not.

Mr. Weisberger inquired whether the Board was being asked first for an interpretation, and if the interpretation was not favorable, the applicant was then seeking a variance

request. He indicated he felt the Board needed to make a determination of whether the ducks were poultry, noting the Ordinance was very specific and clear that ducks were considered poultry. Secondly, he questioned whether the ducks could be interpreted as common household pets. He commented he was not sure the second point mattered, as it had been pointed out poultry was separately defined and it would be superfluous to have that definition in the Ordinance if ducks could be considered a household pet. He questioned whether a motion should be made to discuss the interpretation, and then move on to the next issue.

Chairperson Cockey remarked there was a somewhat similar case, from a procedural standpoint, approximately four (4) or five (5) years ago. He explained the issue involved a homeowner who wanted to enclose a porch, and was informed that was not permitted by the Zoning Ordinance. He stated the homeowner came before the Zoning Board of Appeals (ZBA) requesting a variance. He indicated the ZBA, after some discussion, informally said it appeared there were no grounds to grant a variance; however, in that case, there could be a question of interpretation of the Ordinance. He stated the homeowner then submitted a request for an interpretation, and the ZBA heard the case on those grounds.

Chairperson Cockey questioned what was considered a pet and what was considered livestock. He asked if Staff was aware that until recently there was a lion kept at a residence at Mill Race Road. Mr. McLocklin stated he was recently informed about that matter. Chairperson Cockey stated although he never saw the lion, he had heard it, noting he lived near that area. He questioned if the City Staff had ever received any complaints about the lion. He stated he understood residents had complained to the City and were informed the lion was legal. Mr. McLocklin explained the lion was legal under the Department of Natural Resources (DNR) regarding how the animal was received and the State permit for it.

Chairperson Cockey clarified the City had never gotten involved in an issue regarding whether the lion qualified as a common household pet or livestock. Mr. McLocklin stated the City had never been involved in that matter.

Mr. Robbins brought to the Board's attention that the definition for "poultry" listed under www.dictionary.com was: "Domestic fowl such as chickens, turkeys, ducks or geese raised for meat or eggs". He noted the second definition listed was: "Domestic fowl reared for the table or for their eggs or feathers, such cocks, hens, capons, turkeys, ducks and geese. A domesticated gallinaceous bird thought to be descended from the red jungle fowl; flesh of chickens or turkeys or ducks or geese raised for food". He stated it appeared the definition of poultry was an animal kept in order to eat. He noted he was not sure if the proper definition of poultry actually applies in this instance.

Mr. Rosen referred to Mr. Weisberger's comments, and noted he had raised a good point. He noted the Staff Report indicated if the Board determined that the ducks meet the definition of poultry within the Ordinance, then the applicant would ask for a variance. He commented, "if it looks like a duck, makes noise like a duck, and does everything a

duck does, it is a duck". He noted the Board could argue the definition in www.dictionary.com; however, the Ordinance stated under Section 138-3 (Definitions) that: "Poultry means domestic fowl such as chickens, turkeys, ducks and geese". He indicated the Ordinance did not make any distinction regarding wild or otherwise. He stated the Ordinance applied, with the question then being "is the parcel less than one (1) acre".

Mr. Brennan stated he did not believe the issue was that simple. He noted one of the first questions he asked the applicant was whether the ducks were pets and what they were used for. He indicated the applicant had clearly stated they were not going to consume the ducks, and he felt Mr. Robbins was correct in looking up the commonly used definition of the word. He explained a court would want to know what the common usage of the word was. He stated the applicant's poultry were pets. He did not feel it was an issue of whether the applicant wanted a variance, but rather the question before the Board was interpretation. He agreed the definition of whether or not the ducks were pets should be established first.

Mr. Colling challenged the Board to look at a different paradigm, stating a commonly accepted household pet could be a cockatoo, a parakeet, a parrot, which are birds just as a duck is a bird, whether one preferred to call them poultry or not. He felt the significant difference in this case, was that pets such as a cockatoo were kept in the house in a cage and did not roam the neighborhood. He stated by the applicant's own admission, and the pictures she submitted with her application, the applicant had broken one of the covenants of the deed restrictions by building a shed against the wall in the back of her yard.

Mr. Colling stated a "pet" also assumed there was some responsibility and liability, such as not letting a dog roam by using invisible fencing. He indicated the ducks would not respond well to any type of hedge because they could wiggle through, noting he could say that because he had past experience in raising ducks. He noted if the ducks could be kept in the house or the garage, such as any other house pet, and let outside once in awhile, he could support them as a pet. He stated from what he heard, the ducks were primarily outside, and the Ordinance and covenants of the subdivision deed restrictions made it highly unlikely the applicant would be permitted to build a pen to contain the ducks. He felt that was the issue, noting he did not doubt the ducks were a pet, but indicated there was more to consider than just whether they were pets.

Mr. Weisberger stated it was common for zoning ordinances to contain a statement that indicated that unless otherwise defined within the section, the word would have its common usage, which is when a dictionary is used. He was not certain the City's Zoning Ordinance contained that verbiage.

Chairperson Cockey noted the Board had been provided copies of Section 138-1073 (Raising and keeping of animals) and page 138:16 of Section 138-3 (Definitions), including the definition of poultry.

Chairperson Cockey said the question regarding pets was a question as to how the Ordinance was structured. He pointed out Section 138-1073(a) stated "The keeping of the following animals will be allowed without a permit...", followed by three (3) subparagraphs. He stated he was not an expert in how ordinances were constructed, but there was a question of whether the intent when the ordinance was written was that it was a hierarchical ordinance. He provided the example of a rabbit, which could be considered a common household pet but could also be considered livestock. He inquired whether the intent of the way the Ordinance was written, if it fell within the parameters of subparagraph (2), it did not fit within subparagraph (1) automatically. He noted he did not believe the City's Ordinance language was written in that manner, but rather provided three (3) paragraphs to decide where something fit.

Chairperson Cockey stated he felt the question of interpretation was a valid question. He suggested it might be worthwhile for the Board to decide whether the interpretation behind the City's issuance of the Compliance Letter was a valid interpretation, and therefore a variance would be required to continue to keep the ducks; or whether the interpretation put forward by the applicant that the ducks should be considered as common household pets, as long as there are not more than three (3) of any one species permanently boarded or kept, would be permitted.

Mr. Rosen proposed the following motion for consideration by the Board:

MOTION by Rosen, that the Zoning Board of Appeals finds in the matter of File No. 04-001, that under Section 138-3 (Definitions), the ducks in question fall under the definition of "poultry" and are considered common or domestic poultry (ducks), and therefore, fall under Section 138-1073(a)(3) (Raising and keeping of animals), and are regulated under "poultry" if there are no more than twelve and the parcel or lot is in excess of one acre.

Chairperson Cockey called for a second to the proposed motion. Mr. Colling indicated he would second the motion.

Chairperson Cockey referred to the issue of sanitation, and asked if anyone was aware if it was standard practice in any of the subdivisions within the City to require homeowners to clean up after cats and dogs allowed in their own yards on a regular or periodic basis. He noted it had been stated that the fecal material from the ducks was allowed to be deposited in the yard. He questioned whether it was common practice for owners of cats or dogs to clean up after their pets, or whether any homeowner associations required pet owners to clean up after their pets.

Mr. Rosen stated he was unaware of anyone who walked a cat, and that there were virtually no domestic cats allowed to roam outside in his subdivision. He indicated it was "the norm" for residents in his subdivision to clean up after their dogs as they walked them.

Mr. Colling agreed that would be the standard in a subdivision with a commons area and dogs that are taken for a walk; however, in a neighborhood with fenced yards where the dogs are restricted to the owner's property only, it would be a periodic cleaning. He did not believe there was any one standard within the City other than the fact that if a dog goes into a commons area or on someone else's property, it would be common courtesy to clean up after the dog.

Mr. Rosen stated he had neighbors who cleaned their yards once every few days.

Chairperson Cockey called for discussion on the proposed motion on the floor. Mr. Colling suggested the addition of the following statement: "Based upon the definition within the Ordinance, the definition makes no distinction between pet or non-pet, but just defines poultry". Mr. Rosen agreed to that addition to the motion.

Mr. Brennan suggested City Attorney Staran be consulted because he felt it required a legal interpretation. He proposed the following counter-motion:

MOTION by Brennan, in the matter of File No. 04-001, that City Attorney John Staran provide an interpretation, and the proposed motion currently on the floor be **TABLED**.

Mr. Brennan stated he felt it was necessary for the Board to understand the legislative intent of City Council – whether it was wild ducks or domestic ducks. He noted that was an important distinction as the applicant's ducks were clearly domestic in nature and qualified as pets, as they were not exotic animals. He thought there was a problem with the Ordinance stating "common household pets such as dogs, cats, etc...". He pointed out "et cetera" was a big word, and what was considered common to one person may not be common to another. He felt the City Attorney should provide a legal analysis.

Mr. Robbins pointed out the definition of pet in www.dictionary.com was: "an animal kept for amusement or companionship". He noted the Zoning Ordinance did not contain a definition of "pet", although it included a definition of "family". He agreed it was not clearly defined what was considered a pet and what was not. He felt if the Board considered the intent of the Ordinance and that it was drafted when the City was still a Township, it was probably intended to keep large livestock farms from being put on parcels less than an acre in size. He indicated the historical perspective should be considered.

Chairperson Cockey asked whether Mr. Brennan had made a formal request to table the motion on the floor. Mr. Brennan stated he had. Mr. Weisberger stated he would second the motion to table the motion on the floor. Chairperson Cockey then called for a roll call vote on the motion to table the motion on the floor.

MOTION by Brennan, seconded by Weisberger, in the matter of File No. 04-001, that City Attorney John Staran is hereby requested to provide an interpretation, and further, to **TABLE** the proposed motion currently on the floor.

Roll Call Vote:

Ayes: Weisberger, Brennan, Robbins, Cockey
Nays: Rosen, Colling
Absent: Verschueren

MOTION CARRIED

Chairperson Cockey noted the motion on the floor had been tabled.

Mr. Colling pointed out for the record that the definition of "poultry" in the Ordinance means domestic fowl and clearly defined the difference between wild fowl and domestic. He stated he did not disagree that the applicant's ducks were pets and he did not disagree that the Ordinance was poorly worded; however, the definition was very clear.

Chairperson Cockey asked the Board if they wanted to request Attorney Staran to provide any information to them. He noted Mr. Brennan's motion to table the motion on the floor included requesting Attorney Staran to become involved.

Mr. Colling stated the Board needed to clarify why they wanted Attorney Staran to become involved. Chairperson Cockey stated if the Board could not determine why they wanted Attorney Staran to become involved, then the tabled motion should be brought back on the floor.

Mr. Brennan stated the Board needed clarification from Attorney Staran regarding what are "common household pets" because that was not defined in the Ordinance.

Mr. Weisberger stated he thought Mr. Robbins was correct that the Ordinance had a undefined term, and defining its meaning might be in direct conflict with another term. He noted the issue might not be important to the entire community, but it was certainly important to the applicant's family. He stated on that basis it needed to be determined whether there was a conflict between common household pets and poultry, and if so, how to resolve it.

Mr. Robbins proposed the following motion:

MOTION by Robbins, that the Zoning Board of Appeals hereby requests the City Attorney to review the Zoning Ordinance, Section 138-1073, to determine whether or not a domestic duck could in fact be allowed to be classified as a pet under Section 138-1073(a)(1).

Chairperson Cockey commented it was the Zoning Board of Appeals' duty to interpret the Zoning Ordinance. He stated, in the past, Attorney Staran had stated he did not get in the business of interpreting the meaning of the Ordinance, but rather would provide background information.

Mr. Robbins stated the proposed motion was to request the definition of a domestic duck.

Chairperson Cockey stated the motion was implicitly asking for an interpretation of what is meant by "common household pets", and he felt it was the Board's duty to make that decision.

Mr. Brennan stated the information provided by Attorney Staran would be advisory to the Board, not binding.

Mr. Rosen indicated he felt Attorney Staran would tell the Board it was their job to make that decision. He explained it was the Board's job to interpret the Ordinance in this instance whether or not the applicant's ducks fit in that definition and are, therefore, regulated.

Mr. Colling stated the Board was avoiding its responsibility in this case. He indicated the definition of whether a duck can be a common household pet had been made specifically in the Ordinance in Definitions. He noted the definition of "poultry" is: "domestic fowl," which means a domesticated bird. He stated a fowl is considered a waterfowl, such as a duck, a goose, or a chicken. He felt it was very clear that a domestic fowl, such as the applicant's ducks, which were Muscovy ducks, were considered domestic.

Mr. Brennan pointed out there was no testimony on the record indicating what type of ducks the applicant's ducks were.

Mr. Colling stated irrespective of that, there was a definition within the Ordinance.

Chairperson Cockey called for a second to the proposed motion. Mr. Brennan stated he would second that motion. Chairperson Cockey then called for a roll call vote on the motion.

MOTION by Robbins, seconded by Brennan, that the Zoning Board of Appeals hereby requests the City Attorney to review the Zoning Ordinance, Section 138-1073, to determine whether or not a domestic duck could in fact be allowed to be classified as a pet under Section 138-1073(a)(1).

Roll Call Vote:

Ayes: Weisberger, Brennan, Robbins
Nays: Colling, Rosen, Cockey
Absent: Verschueren

MOTION FAILED

Chairperson Cockey stated the motion had failed due to a 3-3-tie vote. He questioned whether the Board wanted to wait until the next meeting, at which time the tabled motion would fail if it was not brought back, or whether the Board wanted to proceed at this meeting to reach a conclusion.

Mr. Rosen stated the motion to make the determination on whether the Board had jurisdiction had been tabled.

Mr. Robbins clarified the motion that was tabled was the definition of a duck as it related to the Ordinance. Mr. Colling agreed the motion that was tabled was whether a duck could be considered a common household pet.

Chairperson Cockey clarified the motion that was tabled was regarding whether a duck qualified as poultry. He noted it would be cleaner to have a motion that stated the applicant's ducks, in this circumstance, qualified as common household pets. He indicated if the ducks qualified as common household pets, then the Compliance Letter would be void. He stated if such a motion failed, then the Board would move on to consider the variance request.

Mr. Rosen disagreed noting the motion to include them had been tabled. He explained another motion would be necessary, or alternatively that the ducks fell under either Section 138-1073(a)(1) or Section 138-1073(a)(3). He stated the motion to determine if they fell under Section 138-1073(a)(3) had been tabled, and suggested a motion could be made to determine if the ducks fell under Section 138-1073(a)(1).

Chairperson Cockey asked if the Board wished to make a motion that the ducks in this case, kept at 994 Maidstone Drive by Jing Pang should be considered as common household pets under Section 138-1073(a)(1).

Mr. Weisberger stated he believed the motion that was tabled was to have the City Attorney review these issues.

Chairperson Cockey clarified the first motion was Mr. Rosen's motion to have the ducks considered as poultry, seconded by Mr. Colling; and the second motion was Mr. Brennan's motion to table, seconded by Mr. Weisberger, which tabled the first motion. He noted the second motion included a request to consult with the City Attorney.

Mr. Weisberger noted the City Attorney had not been provided any specific direction or specific questions.

Chairperson Cockey questioned whether the Board wished to postpone the matter at this time.

Mr. Colling noted "tabling" a matter usually implied it was for a particular meeting, while a postponement was required to bring the matter back to another meeting.

Chairperson Cockey stated the Board had tabled a particular motion, but had not tabled the overall matter before the Board, which was the Public Hearing regarding case number 04-001. He indicated it was his understanding that the tabled motion would "die" at the conclusion of this meeting.

Mr. Brennan stated he would prefer to postpone this matter to February 9, 2003. He noted although that meeting had been cancelled, this matter could be brought before the Board on that date.

Chairperson Cockey referred to the three-week notice requirement for Public Hearings, and stated the Public Hearing had been held in this matter. Therefore, another three-week notice requirement would not be required if this matter were postponed to a future meeting. Mr. Rosen stated that was true, if there were no change in the applicant's request or circumstances.

Chairperson Cockey noted Mr. Brennan had proposed a motion to postpone the matter to February 9, 2004, and asked if there was a second to that motion. Mr. Robbins stated he would second the motion.

MOTION by Brennan, seconded by Robbins, that the matter involving File No. 04-001, be **POSTPONED** to the February 9, 2004 Zoning Board of Appeals Meeting.

Roll Call Vote:

Ayes: Weisberger, Brennan, Robbins
Nays: Colling, Rosen, Cockey
Absent: Verschueren

MOTION FAILED

Chairperson Cockey noted that motion had failed due to a 3-3-tie vote. He questioned how the Board wanted to proceed.

Mr. Rosen stated Chairperson Cockey's earlier comments about this being the Board's job was correct, although nobody liked to say "no" to residents. Despite that fact, the Board had the information it needed, and it was a relatively simple question --- "are the ducks in question poultry under the City's Ordinance, and therefore, do they fall under Section 138-1073(a)(3)".

Chairperson Cockey called for a recess.

(Recess: 8:48 PM to 8:58 PM)

Chairperson Cockey called the January 26, 2004 Regular Meeting of the Zoning Board of Appeals back to order at 8:58 PM. He asked the Board if they wished to make any motions or hold any additional discussion at this time.

Mr. Robbins stated it was very clear the Board was in a 3-3 split, and suggested it would be beneficial to the Board and fairer to the applicant if the Board waited to make a decision on this matter until the entire Board was present. He stated it was well within the City Attorney's purview to determine the definition of a common pet, and to do some research to determine judiciously what is considered a common household pet, i.e., if a duck fell under the title of a "common household pet" under the Laws of the State of Michigan. He felt that was doable, and the Board was not asking the City Attorney to interpret the Zoning Ordinance definition at that point.

Mr. Robbins stated he felt it was also within the City Attorney's purview to review what is considered "poultry." He pointed out the Board had one definition of poultry within the Zoning Ordinance itself; however, the Zoning Ordinance was missing a definition for "common pet". He indicated he felt the point the Board was attempting to make was whether the ducks were a common household pet, noting the Board currently held two (2) opposing opinions of whether the ducks were poultry or common household pets.

Mr. Colling stated the applicant had the right to request a postponement until a full Board was present.

Ms. Pang stated she would like to have her matter considered at a meeting when a full Board was present to discuss the situation.

Chairperson Cockey commented it had been a long-standing tradition and practice of the Zoning Board of Appeals to grant such a request. He requested a motion to postpone.

MOTION by Rosen, seconded by Robbins, that the Zoning Board of Appeals **POSTPONE** the matter of File No. 04-001, a request for a variance from Section 138-1073(a)(3), for applicant Jing Pang, until the next Regular Meeting of the Zoning Board of Appeals where a full Board is present.

Roll Call Vote:

Ayes: Cockey, Colling, Brennan, Weisberger, Robbins, Rosen

Nays: None

Absent: Verschueren

MOTION CARRIED

Mr. Weisberger requested clarification on whether Mr. Brennan's motion to table and request an interpretation, which had passed, would still be presented to the City Attorney for assistance.

Chairperson Cockey suggested the Recording Secretary communicate to the City Attorney the nature of the discussion and comments, and that the Board had requested the City Attorney's comments regarding the matter.

Mr. Robbins clarified a motion to table could be time specified or unspecified. He stated he felt Mr. Brennan's motion indicated the time period was the point when the City Attorney could review the matter and provide input on the issue. He stated after that time limit, the tabled motion would be brought back on the floor.

Mr. Rosen stated it was his understanding an issue or discussion could be tabled indefinitely. He indicated tabling a motion only postponed it through that meeting, and after the meeting, it was over. He noted that was unless it was specified "table on the minutes".

Chairperson Cockey suggested it was likely Mr. Brennan's motion would become a moot point the next time this case is reviewed.