

MINUTES OF THE TOWN OF WAYNE
 ZONING BOARD OF APPEALS
 August 6, 2018

The meeting opened at 6: 30 PM with a roll call of the members.

MEMBERS:	PRESENT	ABSENT	LATE	ARRIVAL
Bill Feinstein	—	<u>X</u>	—	—
Greg Blessing, alt.	—	<u>X</u>	—	—
Candy Dietrich	<u>X</u>	—	—	—
Wayne Hand, Acting Chair	<u>X</u>	—	—	—
Gill Harrop, CEO	<u>X</u>	—	—	—

ALSO PRESENT:		
Wendell Scotchmer		Allen Childs
Peter McKendrick		James Coots
Kevin Denison		Mark Tette
Barbara Tharrett		Joel Bablo
Gary Osborne		Brenda Stebbins
Marilyn Robbins		Donald Robbins
Jeff Evans		Steve Tomlinson
Bill Tomlinson		Steven Veley

MINUTES:

Ms. Dietrich made a motion to approve the July 2, 2018 minutes, seconded by Mr. Hand.

A roll call vote was taken.

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Bill Feinstein	—	—	<u>X</u>	—
Greg Blessing	—	—	<u>X</u>	—
Candy Dietrich	<u>X</u>	—	—	—
Wayne Hand, Acting Chair	<u>X</u>	—	—	—

Ayes-2. Nays-0. Absent-2. Abstain-0.

NEW BUSINESS:

USE VARIANCE APPLICATION 14V18: Public Hearing. Donald Robbins. Property located at 9600 Treasure House Rd., Town of Wayne. Request to construct a 30 ft. by 50 ft. accessory building on undersized lot without a primary residence.

Mr. Robbins stated the following:

- He wanted to construct a 30 ft. by 50 ft. accessory building.

- They bought the property around 7 years ago with the intent to construct an accessory building to store his equipment and tore down an existing structure that was there.
- Currently all his equipment is being stored out on the open lot.
- The lot itself is 170 ft. by 70 ft.
- He cited the James Thomas' pole barn that was allowed to be put up on Eagle Rock Trail without a principle building.
- Though he was told to put up the building without a permit and pay a fine, he wanted to do what is right.

Mr. Hand noted the following items:

- The lot was located in an R-2 district and according to the current LUR under allowable uses, in order to construct an accessory building there needed to be primary single family residence located on the lot.
- Per NYS requirements, a Use Variance has 4 test questions that must be proven and if any one or more of the questions is not proven, NYS law requires the ZBA to deny the variance.
 - #1) The property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district. (actual dollars and cents proof must be submitted).
 - #2) That the property is being affected by unique, or at least highly uncommon circumstances.
 - #3) That the variance, if granted, will not alter the essential character of the neighborhood.
 - #4) That the hardship is not self-created.
- One other option would be to construct an upstairs residence with storage located below.

Mr. Harrop stated Mr. Robbins would need to apply for a building permit seeking to construct a residence with storage per the NYS building code.

Mr. Hand stated the Zoning Board could address an area variance at tonight's meeting.

Mr. Hand opened the public hearing.

Ms. Kurtz stated 31 letters were sent out the neighboring property owners, with one response from Tom Ault stating he had no objection to the proposed construction.

As no one was present to express any concern, Mr. Hand closed the public hearing.

The 5 test questions were then reviewed and answered as required by NYS.

1. Whether an undesirable change to the character of the neighborhood will take place or if it would be a detriment to nearby properties: No.
2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: No.
3. Whether the requested variance is substantial: No.
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: No.
5. Whether the alleged difficulty was self-created: Yes.

It was then determined that the Benefit to the Applicant did outweigh the Detriment to the Neighborhood or Community.

Ms. Dietrich made a motion to approve Area Variance Application No. 14V18 to allow a 30 ft. by 50 ft. dwelling that meets NYS building code with a well and septic, seconded by Mr. Hand.

A roll call vote was taken. Ayes-2. Nays-0.

Mr. Harrop stated it was safe to say the building wouldn't be a business use.

Mr. Robbins agreed and signed the responsibilities and conditions agreement. (On file)

Much later in this ZBA session, when the Ushkow variance request was being discussed, Marilyn Robbins heard that a combination of their vacant lot with the lot where their residence, may also be an option to meet the principle use requirement. Their parcels are on the same street, but approximately 150 ft. apart and separated by two other properties. She will inquire with the Steuben County real property office to see if a combination of parcels is possible.

AREA VARIANCE APPLICATION NO. 15V18: Public Hearing. Allen Childs. Property located at 11437 East Lake Rd., Town of Wayne. Request alteration, expansion on non-conforming structure too close to high water mark and road setback.

Mr. Childs was present to state the following:

- He was renovating his existing non-conforming cottage and will be staying on the same footprint.
- The current 4 bedrooms and 3 baths would stay the same.
- To keep the existing footprint he was seeking 9 ft. from the high water mark and 32.5 ft. from the East Lake Rd. right of way.

Ms. Kurtz stated 16 letters were sent out and no responses were received back at this time.

Upon discussion, there wasn't any issue, since the proposed construction wasn't changing footprint.

Mr. Hand closed the public hearing.

Mr. Harrop stated he had no issue with this application.

The 5 test questions were then reviewed and answered as required by NYS.

1. Whether an undesirable change to the character of the neighborhood will take place or if it would be a detriment to nearby properties: No.
2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: Yes.
3. Whether the requested variance is substantial: No.
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: No.
5. Whether the alleged difficulty was self-created: No.

It was then determined that the Benefit to the Applicant did outweigh the Detriment to the Neighborhood or Community.

Ms. Dietrich made a motion to approve Area Variance Application No. 15V18 as per submitted plans submitted to the Zoning Board Appeals dated 5/20/18, seconded by Mr. Hand.

A roll call vote was taken. Ayes-2. Nays-0.

Mr. Childs signed the responsibilities and conditions agreement. (On file)

INTERPRETATION APPLICATION NO.01V18: Public Hearing. Joel Bablo.
Property located at 9655 Lakeshore Dr., Town of Wayne. Request interpretation of 7.8.12.

Attorney Evans from Welch & Zink, representing Mr. Bablo handed out pictures of hedges that he found on the internet and pictures he took along the Day Rd. then read section 7.8.12 (3) a) and stated the following:

- A hedge is a barrier to keep things in and out.
- According to the LUR under section 7.8.12 (3) a), the code says no fence, wall, hedge, or similar landscape feature shall be designed, placed, or maintained in such a way as unnecessarily to impair other properties' access to air, sunlight, and air. He noted the keyword is AND that implies all 3 must be met and at best it only impairs the view.

- Further noting, it didn't apply in this case since all 3 items were not being impeded.

Mr. Hand opened the public hearing.

Ms. Kurtz stated 18 letters were sent out and no responses were received back at this time.

Will Tomlinson asked the Board to read 7.8.12 in its entirety.

Mr. Hand then read 7.8.12 (1)(2)(3) a)b)c) and (4) to those present.

Mr. McKendrick, property owner whose property is adjacent to the Mr. Bablos' stated the following:

- He was only here on weekends and if intent means anything, there was a property line dispute regarding the existing pad located on his property.
- The dispute ended with no real conclusion.
- The pad in question is used for parking for people visiting and for a trailer.
- In times past Mr. Bablo has parked vehicles to block his view.
- Neighbors have come to him, stating the trees were planted to obstruct his view.
- To him, view of the Lake is the issue.

Mr. Veley stated he was a year round resident and that it was clear to him that the trees would obstruct Mr. McKendrick's view.

Ms. Stebbins stated she would rather have the trees that Mr. Bablo planted than the bushes that her neighbor planted next to her home on another property in the neighborhood.

Mr. Hand closed the public hearing.

Ms. Dietrich stated she would need to think about the issue.

Mr. Hand stated the Zoning Board had 60 days in which to render a decision and would need that time to evaluate the information.

Attorney Evans requested he be informed once a decision was made.

AREA VARIANCE APPLICATION NO. 16V18: Public Hearing: Leigh Park. Property located at 13191 State Rte. 54. Town of Wayne. Request to replace non-conforming cottage with side yard setbacks less than 10 ft.

Mr. Coots, contractor for Mr. Parks was present to state:

- Mr. Parks wanted to tear down the existing non-conforming cottage and replace it.
- The new cottage would be less non-conforming.
- They were seeking 6.11 ft. on the south side and 6.10 ft. on the north side.
- The deck would meet the required high water setback.

Mr. Harrop stated the existing septic system was evaluated for the new home and he had no issue with this request.

Mr. Hand opened the public hearing.

Ms. Kurtz stated 14 letters were sent and 1 inquiry was received back.

Mr. Denison inquired about the size of the home.

Upon review, it was noted, due to the second floor, the new structure would be 2120 sq. ft., a substantial increase from the current structure.

Mr. Tomlinson stated he had no objection to the proposed project.

Upon discussion the following items were noted:

- Placement of the new home would be less in non-conformity.
- It would be less rather than closer to the road.
- It would have the same number of bedrooms and bathrooms.

As no one had any concerns, Mr. Hand closed the public hearing.

Upon discussion, Mr. Hand stated the 2 variances would be combined for the test questions.

The 5 test questions were then reviewed and answered as required by NYS.

1. Whether an undesirable change to the character of the neighborhood will take place or if it would be a detriment to nearby properties: No.
2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: Yes.
3. Whether the requested variance is substantial: No.
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: No.
5. Whether the alleged difficulty was self-created: Yes.

It was then determined that the Benefit to the Applicant did outweigh the Detriment to the Neighborhood or Community.

Ms. Dietrich made a motion to approve Area Variance Application No. 16V18 as per submitted building plans dated April 2018 allowing 3.1 ft. of relief on the south side and 3.2 ft. of relief on the north side and nothing from neither the lakeside or roadside, seconded by Mr. Hand.

A roll call vote was taken. Ayes-2. Nays-0.

Mr. Coots signed the responsibilities and conditions agreement on behalf of the Parks. (On file)

AREA VARIANCE APPLICATION NO. 17V18: Public Hearing, Mary Scotchmer. Property located at 9589 Brandywine, Town of Wayne. Request to place storage shed on non-conforming lot less than 20,000 sq. ft. that meets the 5 ft. rear setback.

Mr. Scotchmer was present to state the following:

- He has 5 lots and the shed would be placed behind the house.
- The pre-built 10 ft. by 16 ft. Wood-Tex shed would be used to store his lawn mower and equipment.
- He would be meeting the setback requirements.

Mr. Hand opened the public hearing.

Ms. Kurtz stated 23 letters were sent out and 1 person came in the office to state they had no objection.

As no one was present to express any concern, Mr. Hand closed the public hearing.

Mr. Harrop stated he had no issue with this application, since the proposed shed met the setback requirements.

The 5 test questions were then reviewed and answered as required by NYS.

1. Whether an undesirable change to the character of the neighborhood will take place or if it would be a detriment to nearby properties: No.
2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: No.
3. Whether the requested variance is substantial: No.
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: No.
5. Whether the alleged difficulty was self-created: Yes.

It was then determined that the Benefit to the Applicant did outweigh the Detriment to the Neighborhood or Community.

Ms. Dietrich made a motion to approve Area Variance Application No. 17V18 as per submitted plans submitted to the Zoning Board Appeals dated 7/10/18 placing the shed no closer than 5 ft. from the rear property line, seconded by Mr. Hand.

A roll call vote was taken. Ayes-2. Nays-0.

Mr. Scotchmer signed the responsibilities and conditions agreement. (On file)

AREA VARIANCE APPLICATION NO. 18V18: Public Hearing. Bruce Ushkow. Property located at 9672 Crystal Beach Rd., Town of Wayne. Request to add onto existing non-conforming garage on non-conforming lot less than 10,000 sq. ft. with side setbacks less than 10 ft.

Mr. Tette, contractor for Mr. Ushow, was present to state the following:

- The homeowners were moving from a larger home and needed additional storage space.
- The existing garage was built in the 60's and the wiring needed upgraded for safety and to install a house generator.
- The proposed addition wouldn't increase the non-conformity.
- The Ushkows are in the process of combining two lots separated by Crystal Beach Rd.

Mr. Hand opened the public hearing.

Ms. Kurtz stated 14 letters were sent out and 1 letter was received back stating they had no objection.

As no one was present to express any concern, Mr. Hand closed the public hearing.

Mr. Harrop stated he had no issue with this application, as the applicant combined the 2 lots.

The 5 test questions were then reviewed and answered as required by NYS.

1. Whether an undesirable change to the character of the neighborhood will take place or if it would be a detriment to nearby properties: No.
2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: No.
3. Whether the requested variance is substantial: No.
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: No.
5. Whether the alleged difficulty was self-created: Yes.

It was then determined that the Benefit to the Applicant did outweigh the Detriment to the Neighborhood or Community.

Ms. Dietrich made a motion to approve Area Variance Application No. 18V18 as per submitted plans submitted to the Zoning Board Appeals dated 7/24/18 granting 6.8 ft. on the side yard setback and 7.8 ft. of relief on the rear yard setback, seconded by Mr. Hand.

A roll call vote was taken. Ayes-2. Nays-0.

Mr. Tette signed the responsibilities and conditions agreement on behalf of the applicant. (On file)

As there was no further discussion to be discussed, Ms. Dietrich made a motion to adjourn the meeting, seconded by Mr. Hand. The meeting was adjourned at 8:30PM.

Respectfully submitted, Maureen Kurtz