

MINUTES OF THE TOWN OF WAYNE  
 ZONING BOARD OF APPEALS  
 May 6, 2019

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

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

ALSO PRESENT: Attorney Scott D. Moore	Attorney Baker
Lucy Tongue	Tom Dunbar
John Wylie, Crooked Lake Court Rep.	
Dean Benson	Andrew Millan
Attorney Laura Smith	

**MINUTES:**

Mr. Feinstein made a motion to approve the October 1, 2018 minutes as presented, seconded by Ms. Dietrich.

Ms. Dietrich made a motion to approve the April 1, 2019 minutes as amended, seconded by Mr. Hand.

**NEW BUSINESS:**

**APPEAL APPLICATION NO. 10V19: Public Hearing.** Andrew Millan. Property located at 8181 Whitehead Hill Rd., town of Wayne. Request a site-built carport less than 50 ft. from road right-of-way.

Mr. Millan stated the following:

- His property was located on both sides of the road.
- He wanted to put the carport on the barn side of the property approximately 36 to 40 ft. from the barn.
- Placement of the carport would allow safe pulling in and out of his truck and camper.
- It would also allow him to use an existing gravel base.
- Placement of the proposed carport was 20 ft. from the edge of the road.

Mr. Hand opened the public hearing.

Ms. Kurtz stated 8 letters were sent out and no responses were received back.

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

Upon discussion, the following items were noted:

- Per Mr. Harrop, the road right-of-way is 50 ft., so the proposed building location is 5 ft. from the road ROW.
- The other farm buildings were located closer to the road.
- Placement of the carport was further back from the road and on a straighter portion of the road.

Mr. Feinstein stated the application was seeking 45 ft. of relief from the road right-of-way.

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.

Mr. Feinstein made a motion to grant 45 ft. setback relief from the road right-of-way based on the drawing submitted with the building permit dated 4/23/2019, seconded by Ms. Dietrich.

A roll call vote was taken.

	<u>AYE(yes)</u>	<u>NAY(no)</u>	<u>ABSENT</u>	<u>ABSTAIN</u>
Wayne Hand, Acting Chair	<u>X</u>	—	—	—
Candy Dietrich	<u>X</u>	—	—	—
Bill Feinstein	<u>X</u>	—	—	—

Ayes-3 Nays-0.

Mr. Millan signed the variance responsibilities and conditions sheet. (On file).

**OLD BUSINESS:**

**APPEAL APPLICATION NO. 04V19:** Crooked Lake LLC/Tongue. Property located at 9989 Sunfish. Request addendum to Variance 17V16 for deck.

Mr. Hand stated he was not personally involved with the Crooked Lake LLC and Tongue request that was approved in 2017 and to best help with the current request, created and reviewed with those present a chronological 10-year timeline.

Upon review, the following items were noted:

- This is a pre-existing non-conforming Use and Use Variances are hard to approve.
- Since 2010, every time a replacement trailer has been replaced, the Board has been lenient.
- The Planning Board and an outside source tried to create a long-term plan that would address the pre-existing non-conforming Use issue of being less non-conforming.
- In February 2017, Variance No. 17V16 was denied then tabled because due to the non-conforming Use, you may replace in kind but not expand.
- In March 2017, Ms. Tongue readjusted her plans to the original footprint with no decks, just steps and was approved.
- This is just one more instance where the applicant built larger than approved.

Attorney Moore stated his client was requesting an amendment to the existing area variance citing the following:

- The original plans were for the trailer of 528 sq. ft. plus 408 sq. ft for decks equaled 936 sq. ft., now with the new deck it's 1,224 sq. ft.
- During the transition process between Crooked Lake LLC and the Zoning Board, the decks were not on the drawing.
- Ms. Tongue relied on both the Park and the contractor.
- The challenge is how to fix it.

Mr. Hand corrected Attorney Moore stating that the original trailer was 8' x 43' (344 sq. ft.), and that the original enclosed porch was 12'x34' (408 sq. ft.), totaling 752 sq. ft. The new double wide trailer approved in March of 2017 is 24' x 44', or 1,056 sq. ft. If one also considers the two original 12'x12' ground level decks, which were not attached to the trailer or porch, they equate to an additional 288 sq. ft.

Mr. Benson, one of the managers for Crooked Lake LLC, was present to state the following:

- He happened to be in the park in November 2017 to pick up some items and saw some lumber in the front yard of the Tongue residence.

- He told the contractor to stop work as no plans were submitted to the Park, there was no building permit, and that the Park was closed.
- The park has a building policy that all residents are to follow.
- Apparently, the trailer owner (Ms. Tongue) requested the contractor to return and finish constructing the deck.

Attorney Baker stated concern for safety because of the steep slope issue and a possible compromise.

Mr. Wylie, representative for Crooked Lake stated the construction meets code and at this point the cost of removing the deck would be a hardship and cause more erosion of the steep slope.

Mr. Harrop stated that since this was an illegal structure, he had not inspected it.

The Zoning Board closed the public hearing as per section 108 of the Public Officers Law in order to seek advice from legal counsel.

Upon reopening the hearing, Attorney Moore inquired if his applicant could keep the 12' by 12' existing deck and stairs on the North side and leave the support posts from the deck in order to back fill the slope to stabilize the bank, plus attach to it a safety barrier. They would disassemble and remove all of the remaining deck.

Mr. Hand stated this would fit in what was pre-existing, didn't require a variance and the details could be worked out between Mr. Harrop and Crooked Lake LLC without coming back to the Zoning Board since it would not be expanding on the historical footprint (provided the new deck(s) do not exceed 288 sq. ft., the sum of the original two ground level decks).

Attorney Smith stated that the Board did not have purview over whether the support posts could remain. Review of stabilization/allowing support posts to remain should be between Mr. Harrop and Crooked Lake LLC.

Upon further discussion, Ms. Dietrich made a motion to deny Variance Application 04V19 as the deck would be an "expansion of a pre-existing non-conforming Use due to the overall dimensions of the constructed deck, seconded by Mr. Hand.

A roll call vote was taken.

	<u>AYE(yes)</u>	<u>NAY(no)</u>	<u>ABSENT</u>	<u>ABSTAIN</u>
Wayne Hand, Acting Chair	<u>X</u>	—	—	—
Candy Dietrich	<u>X</u>	—	—	—
Bill Feinstein	<u>X</u>	—	—	—

Ayes-3 Nays-0.

Mr. Hand informed Crooked Lake LLC that whatever their organizational structure is, they need to continue to convey to all current and future managers and owners, that there are to be no further expansions from current footprints.

As there was no further business, Ms. Dietrich made a motion to adjourn the meeting at 8:34PM.

Respectfully submitted, Maureen Kurtz