

MINUTES OF THE TOWN OF WAYNE

ZONING BOARD OF APPEALS

November 4, 2024

The meeting opened at 6:58 PM with a roll call of the members. The meeting was held in-person and via Zoom at the Town Hall.

	PRESENT	ABSENT	LATE
MEMBERS: Wayne Hand, Chair	X		
Jon Serdula	X		
David Westcott	zoom		
Emily Jennifer Rouin	x		
Karsten Konig	X		
Jason Ferris, Alt.		X	
Candy Dietrich, alt	X		
Dave Bauer, Board Liaison	X		
Gill Harrop, CEO	X		

ALSO PRESENT: Dan and Mary Ellen Hamm, Lori Foster (zoom) David Harmon, Nolan Kokkoris, Connor Ingerson, Roberta and Phil Harris, Joe Hope, Richard Rosenberg.

Agenda Review

The agenda was re-ordered to hear the Hamm case first

Minutes

Minutes of the October 7, 2024 meeting were approved with the changes made by Mr. Hand.

Mr. Konig made the motion. Ms. Rouin seconded. Minutes approved.

Appeal No.17v24: Daniel and Mary Ellen Hamm Property Tax ID # 064.00-01-037.121 10076 Hyatt Hill Road, Town of Wayne in HS-1, Town of Wayne Short Term Rental Law, Number 1, 2023

Mr. Hand suggested that the place to start is to talk about the sequence of things. The understanding is that in February 2024, the Hamm’s submitted an application for a short-term rental permit. The Hamm’s attorney stated that was correct and that Mr. and Mrs. Hamm operated the property at 10076 Hyatt Hill Road under that permit without issue until June 22 of this year.

On that date there was an issue with a carbon monoxide leak in the house, called in by the renters. The Town of Wayne Fire department responded. The water heater on the property was the cause. While responding, the fire department discovered that there was only one carbon monoxide detector in the property when there should have been two. They also noted missing

smoke detectors. Mr. and Mrs. Hamm were the emergency contact for the renters. The renters could not reach them that night.

The next day Mr. and Mrs. Hamm were made aware of the incident and immediately took action to repair the water heater to fix the leak and add an additional carbon monoxide detector to the property. Following that, at some future time they added a total of eight combination smoke and carbon monoxide detectors in the property and made various other corrections that were suggested by the code enforcement officer during a July inspection.

Mr. Hand clarified that corrective actions were taken after the incident. The attorney agreed.

Mr. Buck, the town attorney, stated that when Hamm's submitted the application, they attested to complying with all the requirements in the application and NYS building code. Mr. Kokkoris agreed that they were required to self-certify that they were in compliance. Mr. Buck then states that their application was a misrepresentation. Mr. Kokkoris stated it was not a misrepresentation, just a mistake. They thought they were in compliance.

It was pointed out that there seemed to be deficiencies on the night of June 22. The fire chief's report as well a letter sent by the renters detailing the night's events both report deficiencies in detectors. He also noted that one window in a basement bedroom would not open.

It was unclear as to what equipment was in place before June 22, what equipment was placed the next day, June 23, and what was still missing and identified as deficient during the July 25 inspection by the Code officer. The Hamm's information indicates all needed smoke detectors were in correct placement on June 22. Reports from the Fire Chief, Code Officer and the rentals state otherwise.

Mr. Serdula asked how long have they owned and rented the house. Mr. Hamm responded about three years. Mr. Serdula also asked about any expansion of the home. The home was expanded from one to six bedrooms with an upgraded septic system. All work was permitted through the town. There was a discussion about inspections and Mr. Harrop indicated that remodeling inspections are limited to heating, air conditioning and plumbing. It is limited to certain subjects, whether you have to inspect it or not. A new OC would not be issued or needed.

Mr. Kokkoris reiterated that the only deficiency on June 22 was one carbon monoxide detector. Mr. Buck reiterated that the statements from the Fire Chief and the renters conflict with the owner's representation of what equipment was present.

Mrs. Hamm spoke and said that three fire extinguishers were in the house as prescribed by short-term rental permit. Mr. Buck the said that the fire extinguishers were in the building; the factual dispute is the number of actual smoke and carbon monoxide detectors. Mr. Hamm stated that there were three fire extinguishers on June 22 and later 2 additional extinguishes were added on the recommendation of the code officer.

Mr. Buck said “There is no factual dispute, if I understand correctly, that you or your agent filled out the permit application and you said that your structure was in compliance with the uniform building and fire safety code.” Mr. Kokkoris indicated that that was correct.

Mr. Buck continued “Okay, I understand that your counsel is saying that there was no intent, but intent is not an element to consider in filling out the application. The application says, is it compliant? Not do you believe it's compliant, but is it compliant? And the town relies on the homeowner to make that representation. The Uniform Building Code is followed to keep people safe.”

Mr. Buck further stated that there is no dispute that at the time of the incident, the property was not compliant. Mr. Kokkoris agreed.

Mr. Kokkoris moved to a review of Section II of the STR law, pointing out that it is designed to have a progressively more punitive penalty. Mr. Kokkoris argued that a one-year suspension of the rental would be a loss to the Hamms upwards of \$70,000 of income. As this was a first offence, one year seemed extremely punitive.

Buck asked if that the severity of the issue should weigh in the decision to level a penalty. Mr. Kokkoris agreed that severity should be a factor. Mr. Kokkoris then went on to point out that the existing carbon monoxide detector in the house did work, woke the occupants and the issue was later resolved.

Buck then brought up that no one picked up the emergency calls from the renters and that the purpose of an emergency contact was to be responsive during the emergency. He questioned why there was no response to the call and what has been done to rectify that situation? Mrs. Hamm took full responsibility for that, stating her phone was on a charger in another room and she did not hear the calls as her bedroom has a white noise machine that runs when they are asleep. She stated this is an anomaly as she has not had this happen with her other rentals.

Mr. Hand stated that several things were corrected June 22, and others things were not corrected until the inspection in July.

Ms. Dietrich asked what is the fire code is for smoke detector beyond one in each bedroom? Mr. Harrop stated that one in a common area with hallway, a CO and smoke detector within 6 feet of bedrooms, the utility area would need a CO, which was not present when inspected in July, and a Smoke/CO detector at bottom of the stairs,

During Code Officer’s inspection smoke detectors were inside the bedrooms. The Hamms dispute the observation of the Fire Chief on the night of the incident that the detectors were missing.

Public Comments Open

Dave Harmon, made a statement that pointed out that this is a business that brings in new groups each week and questioned who monitored the number of actual guests at the rental. Mr. Hamm responded that visitors are allowed during the day with only 12 guests staying overnight. Mr. Buck stated that this issue is not legally relevant to this conversation.

Roberta Harris asked about camping outside on the land. Mr. Hamm pointed out that the camping on the grounds is associated with a special bike tour. Mr. Buck pointed out camping was not anticipated when the STR law was written. Again, not relevant to the question at hand.

Public Comments Closed

Mr. Hand asked if the board had any additional questions and then recapped the issues.

- No dispute that the owners misrepresented information in the permit
- Applicants assert that they did not understand the requirements. They have been renting the property and other properties for years. They should understand
- Things were corrected -some immediately, more was corrected after July inspection.

Mr. Hamm reiterated that the corrections were made on June 23, other identified deficiencies were corrected and additional “best practice items” were added in July after Code Enforcement’s inspection.

Mr. Harrop referred the group to his report and the photos the owners provided to document the repairs and corrections.

Mrs. Hamm pointed out that they were in compliance with the number of fire extinguishers outlined in the STR (3 extinguishers). Mr. Harrop indicated that he considered the structure to be a commercial use. Mr. Buck said that in this situation the STR law considers this a home and that the owners were in conformance with the STR.

A conversation ensued about the definition of a single-family home. Mr. Buck said that this is not germane to the current conversation. It may need clarification in the future.

Mr. Hand then corrected his earlier statement regarding the July 25 inspection by the CEO, where only 5 of the earlier mentioned 8 deficiencies were for a residential property. The other 3 related only to a commercial property. All 8 of these items were immediately corrected that same day by the Hamms.

1. 1 missing CO detector in utility room
2. 1 at bottom of the stairs
3. 1 missing CO near water heater
4. 1 defective upstairs bedroom
5. 1 one missing in pantry

Mr. Kokkoris stated that his clients felt that a 6-month revocation of the permit would be fair.

Mr. Hand said the board would issue a ruling on the matter in 30 days.

Appeal No.16v24: Jon Serdula Property Tax ID # 106.00-01-006.300 no street # Shorewood Drive, Town of Wayne in HS-2, LUR 2.d.iv, 3.0 A.4.b.iii, 1.0

Mr. Serdula wishes to build a new barn for storage and remove an old garage that currently sits on the septic system. The principal use will remain agricultural. The proposed structure does not create any viewshed issues for neighbors.

The lot is pre-existing, non-conforming. Setback from the lot lines is needed.

Mr. Konig made a motion to allow building on a pre-existing non-conforming lot and grant setback relief from Shorewood Drive of 19' and 27' of relief from the west boundary line. Ms. Dietrich seconded the motion. Conditions of the build are to that the size cannot exceed a footprint of 44' x 72'.

Motion was approved. Mr. Serdula abstained.

Mr. Harrop asked that Mr. Serdula finish the outstanding items to complete the permit on his home. Mr. Hand indicated that was beyond the purview of the board.

Mr. Richard Rosenburg was at the meeting and expressed an interest in joining the board. His name will be forwarded to the Town board for appointment.

The meeting adjourned at 8:23 PM