

MINUTES OF THE TOWN OF WAYNE  
ZONING BOARD OF APPEALS  
May 12, 2016

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            | —        | <u>X</u> | —            |
| Candy Dietrich           | <u>X</u> | —        | —            |
| Bernadette Ervin, alt.   | <u>X</u> | —        | —            |
| Wayne Hand, Acting Chair | <u>X</u> | —        | —            |

ALSO PRESENT: Gill Harrop, Code Enforcement Officer

|                |                     |
|----------------|---------------------|
| Larry Ownes    | Larry Owens, senior |
| Gusta Carr     | Carol Englert       |
| Nancy Gabel    | Judith deVries      |
| Branden Cullum | Arthur Wilder       |

**MINUTES:**

Due to both Mr. Feinstein and Mr. Blessing being absent, the March 10, 2016 were deferred at this time, since Wayne Hand was the only member present at that meeting and able to vote.

For the record, Mr. Hand had no issue with the March 10, 2016 minutes as recorded.

**NEW BUSINESS:**

**AREA VARIANCE APPLICATION NO. 03V16:** Lawrence Owens. Property located at 12224 East Lake Rd., Town of Wayne. Request to demolish old cottage and rebuild new on existing non-conforming lot, more than one dwelling on single R-1 lot, 2<sup>nd</sup> dwelling less than 10 ft. to side lot. (Sections 7.2.3 and 6.3)

Mr. Owens stated the following:

- The existing main cottage was built in the 40's and was approximately 750 sq. ft.
- It was recommended the dwelling be demolished and replaced after an inspection by his licensed contractor, who was unable to be present at this meeting, due to family matters.
- The proposed new cottage would meet all setback requirements.
- He owned an adjacent lot with a different tax parcel; due to an absorption system located on that lot for his neighbors: Mr. Kraus and Mr. Michlosky, he was reluctant to combine the two lots.

- Part of the variance request is to extend an existing porch 2 ft., on the guesthouse that is non-conforming due its north corner being too close to the side yard setback.
- The guesthouse itself would remain on the same footprint on the north side and not extend into further non-conforming.
- Currently existing stairs located on the property are less than 25 ft. from the road right of way.

Mr. Hand opened the public hearing.

Ms. Kurtz stated 15 letters were sent out and no responses were received back at this time.

Mr. Carlson, one of Mr. Owens' neighbors was present to review the application and since Mr. Owens wasn't changing what was currently there; had no issue with the proposed project.

Mr. Carr inquired if a variance would be required if the applicant demolished both the guesthouse and main house and just put up one residence.

Mr. Owens stated he wanted to keep both structures.

Mr. Harrop stated the following:

- A lot line adjustment would make the existing guesthouse conforming.
- The issue of having two dwellings on one lot and the existing stairs too close to the road right of way would still remain.

Mr. Hand closed the public hearing at 7:15PM.

After some discussion, Mr. Hand stated there were 3 proposed variances:

1. Two dwellings located on a single lot with one dwelling too close to the side yard setback.
2. Existing stairs located less than 25 ft. from the road right of way.
3. Current Land Use Regulations require each dwelling to have 50 ft. of Lake frontage.

Mr. Hand further noted if the variance was granted, the applicant would still need to address Section 7.2.6, the issue of allowing 2 dwellings being located on one lot by seeking Special Permit.

Ms. Dietrich made a motion to made a motion to allow all three variances be combined for the 5 test questions required by NYS, seconded by Ms. Ervin.

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: 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. 03V16 with the condition the guesthouse be no closer on the north property line than the current 6.5 ft. (3.5 ft. relief), seconded by Ms. Ervin.

A roll call vote was taken.

|                          | <u>Aye(yes)</u> | <u>Nay(No)</u> | <u>Absent</u> | <u>Abstain</u> |
|--------------------------|-----------------|----------------|---------------|----------------|
| Bill Feinstein           | —               | —              | X             | —              |
| Greg Blessing            | —               | —              | X             | —              |
| Candy Dietrich           | X               | —              | —             | —              |
| Bernadette Ervin         | X               | —              | —             | —              |
| Wayne Hand, Acting Chair | X               | —              | —             | —              |

Ayes-3. Nay-0. Absent-2. Abstain-0.

Mr. Owens signed the Variance: Responsibilities and Conditions sheet. (On file).

**AREA VARIANCE APPLICATION 04V16:** Gusta Carr. Property located at 9386 Wixson Rd., Town of Wayne. Request to place a 20 ft. by 26 ft. pavilion on a lot less than 20,000 sq. ft. (Accessory Building) (Section 7.2.3)

Mr. Carr stated the following:

- Currently both he and a friend own the adjacent property located at 9618 Treasure House Rd.
- The proposed structure would be located on the empty lot that he alone purchased.
- The structure would be open sided except for the proposed bathroom.
- They would tie the bathroom into the proposed holding tank that will service the cottage located at 9618 Treasure House Rd. and the pavilion.
- The pavilion would be used for picnics in the summer and storage during the winter.
- Lots located in the area are mostly all less than 20, 200 sq. ft.

Mr. Hand stated the pavilion met the setback requirements, but due to the non-conforming lot size, needed a variance. He further noted that a bathroom could make the structure a potential dwelling.

Mr. Carr stated there would be no sleeping or cooking facilities in the pavilion; as it isn't intended for anyone to live in it. The bathroom would keep people from using the one in the cottage.

Mr. Hand opened the public hearing.

Ms. Kurtz stated 41 letters were sent; no written responses were received back.

No one was present to express any concern.

Mr. Harrop stated the following:

- The neighborhood is mostly non-conforming due to lot size.
- The application is in character with the neighborhood.
- Use is not an issue, as the structure will be open sided.

Mr. Hand closed the public hearing at 7:40PM.

Upon discussion, when reviewing and answering the following five test questions required by NYS, Mr. Hand stated the applicant was seeking a variance to construct an accessory building on a pre-existing non-conforming lot:

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: No.  
Reason: It's a pre-existing undersized lot.

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 04V16 with the condition the pavilion exterior remain open, except for the 5 ft. by 8 ft. bathroom, seconded by Ms. Ervin.

A roll call vote was taken.

|                          | <u>Aye(yes)</u> | <u>Nay(No)</u> | <u>Absent</u> | <u>Abstain</u> |
|--------------------------|-----------------|----------------|---------------|----------------|
| Bill Feinstein           | —               | —              | X             | —              |
| Greg Blessing            | —               | —              | X             | —              |
| Candy Dietrich           | X               | —              | —             | —              |
| Bernadette Ervin         | X               | —              | —             | —              |
| Wayne Hand, Acting Chair | X               | —              | —             | —              |

Ayes-3. Nay-0. Absent-2. Abstain-0.

Mr.Carr signed the Variance: Responsibilities and Conditions sheet. (On file).

**AREA VARIANCE APPLICATION 05V16:** Judith deVries. Property located at 8886 Wixson Rd., Town of Wayne. Request expansion on non-conforming structure. (Section 7.2.3)

Ms. deVries stated the following:

- They bought the property 2 years ago and the existing deck didn't allow much space to have a table and chairs.
- The idea was to extend the 6 ft. deck closer to the Lake and on the north side in order to be accessible to the kitchen.
- The design of the deck would keep in style with existing house.
- The bottom would be open.
- There was no issue with flooding.

Mr. Harrop stated he had no issue with this request as long as it didn't impede anyone's view.

Mr. Hand opened the public hearing.

Ms. Kurtz stated 17 letters were sent and no responses were received back at this time.

Ms. Englert was present to state the following:

- She was the next door neighbor.
- The only water issue came from the upper road due to drainage issues.
- The proposed deck wouldn't interfere with anyone's view.
- It would be an improvement.

Ms. Gabel, another neighbor to the applicant was present to state she had no issue with this request and that it was a good addition.

After some discussion, Mr. Hand stated the request was for 3 variances:

1. Construction on an undersized lot.
2. Relief of 3.5 ft. on the North side of the deck.
3. Relief of 18 ft. from the mean high water mark.

Mr. Hand closed the public hearing at 8:15PM.

Upon discussion, Mr. Hand stated the Board would combine the 3 variances when reviewing and answering the following five test questions 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.  
Reason: Will not reduce neighbor's visibility.
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.  
Reason: Distance to mean high water is substantial.
5. Whether the alleged difficulty was self-created: No.  
Reason: It's an existing non-conforming lot.

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 05V16 with the condition the under deck remain open and be no closer than 18 ft. from the mean high water mark, seconded by Ms. Ervin

A roll call vote was taken.

|                          | <u>Aye(yes)</u> | <u>Nay(No)</u> | <u>Absent</u> | <u>Abstain</u> |
|--------------------------|-----------------|----------------|---------------|----------------|
| Bill Feinstein           | —               | —              | X             | —              |
| Greg Blessing            | —               | —              | X             | —              |
| Candy Dietrich           | X               | —              | —             | —              |
| Bernadette Ervin         | X               | —              | —             | —              |
| Wayne Hand, Acting Chair | X               | —              | —             | —              |

Ayes-3. Nay-0. Absent-2. Abstain-0.

Ms. deVries signed the Variance Responsibilities and Condition sheet. (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