

TOWN OF WAYNE
Zoning Board of Appeals
June 9, 2016

Mr. Feinstein called the Board Meeting to order at 6:30 pm, with roll call.

Roll call:	Mr. William Feinstein Mr. Wayne Hand Ms. Candy Dietrich	Absent: Mr. Greg Blessing Ms. Bernadette Ervin
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Also in attendance from the Town of Wayne:
Gill Harrop, Code Enforcement Officer
Leslie Mauro, Town Attorney
Beth Mooney, Town Clerk, acting secretary

Attendance sheet:

John and Linda Vang	Donald W. Young	Russell Hoover
LuAnn Simmons	Carrie Johnson	Scott Moore
Jim McCormick	Keith Johnson	Rita Ungerland
David Bauer	Mary Ellen Miller	Carol and Jim Englehart
Susan Black	George Booth	John Lonergan
Geoff and Lynn Heat	JoAnn Ungerland	
Marilyn D'Angelo	David Frost	

Review of Minutes

The minutes from the meeting of March 10 were reviewed. A motion to approve the minutes was made by Mr. Hand, seconded by Mr. Feinstein. All in favor, with Ms. Dietrich abstaining

The minutes from the meeting of May 12 were reviewed. These minutes needed revisions, and will table approval at this time.

New Business

James McCormick – Area Variance 07V16

Mr. McCormick stated he wishes to expand his bedroom, and create a larger deck, which will eliminate the need to repair and redesign the roof. The last project done to this house was in 1984 when Bob Canfield was code officer. This house predates the zoning ordinance and it is a pre-existing, non-conforming change. The footprint of the home remains the same, and there are no height differences. The outside stairs will remain as part of the existing building.

Mr. Feinstein called the public hearing to order at 6:45. There were no comments, no objections made. The public hearing was closed at 6:45

Upon discussion, when reviewing and answering the following five test questions required by NYS, Mr. Feinstein stated the applicant was seeking a variance to make a pre-existing, non-conforming change to his home.

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 determined that the benefit to the applicant did outweigh the detriment to the neighborhood or community.

Mr. Hand made a motion to approve Area Variance Application 07V16, seconded by Ms. Dietrich, and all in favor. A roll call vote was taken.

Mr. William Feinstein yes
Mr. Wayne Hand yes
Ms. Candy Dietrich yes

Mr. McCormick signed the Variance: Responsibilities and Conditions sheet. (on file)

Mr. Harrop mentioned incidentally that Mr. McCormick's application was one of the most complete he's seen.

John and Linda Vang - Use Variance 06V16 and 02SP16

Mr. and Mrs. Vang stated they initially wanted to put up a sign for a home base business, and now they'd like a use variance. They opened for home business on 5.25.16.

Mr. Feinstein stated home occupation businesses are permitted in an AG-R zone. Provided they reside on the premises. The Vang's replied they do reside on the premises, but do not sleep there. Mr. Feinstein stated that means they do not reside on the premises. The Vang's stated they were told by the Town Planning Board that that was OK.

The reason they want a use variance is because eventually, they'd like to hire employees, get a sign of a decent size, and if successful, they want to add more plans.

Mr. Feinstein stated that according the regulations, they are not conducting a proper home based business.

They have a temporary C of O.

The Vang's stated they will move in tonight, and they change permanent address, and voter registration tomorrow.

Their business is restoring furniture and selling home décor items and paint products.

The breakdown of their business goods and services 80% restoration

20% sales

Their goal is to keep the property as a working farm. They want to grow the business until it goes from home occupation to a retail business. They are asking for a use variance for a retail business. They want a bigger sign for the retail business.

The Vang's request a use variance for the business and an area variance for a larger business sign.

Mr. Feinstein stated the LUR does not allow a retail business in an AG-R area. The burden of proof is on them. The Vang's must show by financial evidence, proof that you cannot make a reasonable return on investment. They must show undue hardship.

The Vang's state there is no hardship whatsoever and they respectfully withdraw the application.

Peter Ungerland – A2-16

Presents an appeal of an interpretation.

Mr. Scott Moore is the attorney representing the Ungerland's.

Ms. Leslie Mauro explained the facts of the situation. Mr. Ungerland was granted a building permit in December 8, 2015. The permit lapsed on March 7, 2016. Testimony states no activity on the property prior to April 12, 2016. Excavation on the property was not slated to begin until May. An area variance should have been required prior to issuing a building permit. Ms. Mauro read the LUR's definitions of accessory buildings. Based on the intent of the code, all accessory buildings cannot be more than 18 ft. in height. The neighbors are objecting saying this structure will block their scenic view. In addition, the amount of the excavation needed for a building of this size would need an additional permit.

Mr. Moore represented the Ungerland's had submitted a building permit and site plan review which were both reviewed by the Code Enforcement Officer and the Town of Wayne Planning Board, and approval was given to proceed with construction. Planning Board minutes reflect that "the site was fairly level, with only minor grading needed," and that the application was "pretty cut and dry." Mr. Kolo, the excavator, had equipment on site in mid-March. Mr. Moore read the LUR section 7.8.11 aloud.

Mr. Feinstein stated that, in his opinion, it all comes down to the interpretation of section 7.8.11. Yes, Section 7.8.11 is a flawed provision because of missing words, and as a result, may have not been consistently interpreted in this town as accessory buildings are not to exceed 18 feet in height. However, it should have been interpreted that way.

Mr. Ungerland states that he has already spent a lot of money on this building, that he was granted a building permit, and he feels he is 'getting shafted'. The things that would be stored in this building are for personal use only. He feels that as a tax payer, he be treated just like everyone else in this town, and that that right was taken away from him. "Everything I did was right."

Open Public Hearing – 7:48

Lynn Heath

Read her letter (see attached)

She wants to protect the view shed

She shared several photos (see attached)

David Frost

The Frost's reside at Mr. Ungerland's place during the winter (Mrs. Joanna Frost is Mr. Peter Ungerland's sister)

They've been moving dirt for 2 months

There has been a sign at the top indicating a hidden driveway

The Heath's have been very cooperative since the beginning

The Heath's can still see the water – What they won't be able to see is into the back of Ungerland's land

Donald Young

Lives on Silsbee

He's the original chair of the planning board

The purpose of the original LUR was to protect view sheds and to protect any interruptions to the view shed, this is an ill-conceived project that should never have gotten this far.

Jeff Heath

They assisted in trimming the trees, but could not see the size of the pad footprint

They didn't realize the extent of the project until Kolo came in and started digging

Our view shed includes our house, and infinity, not just the view of the water

Keith Johnson

We live in a beautiful area

Many people come here just for the scenery

It doesn't make sense to obliterate the view

Marilyn D'Angelo - Lives opposite the construction
Is opposed to the construction
See submitted letter

John Vang

Why was that site chosen. It should have been in a side yard/back yard or in front of the current barn.

Mr. Ungerland replied that there were drainage issues there.

Darren and Winifred Stowe

Submitted a letter opposing construction of the structure
It was not read aloud.
See submitted letter

Ms. Dietrich questioned why the structure is so big.

Mr. Ungerland replied, "I have a lot of stuff."

Public Hearing closed at 8:10 pm

Mr. Hand commented that it's an unfortunate set of circumstances, and that mistakes may have been made, but the interpretation of height in this section of the LUR is < 18 feet. There should have been a variance application for the ZBA before going to the planning board.

Mr. Ungerland replied that he had a building permit, and he followed all the rules. There is no commercial business going on there. It's all for him, all of his stuff.

Mr. Feinstein stated that this board is charged with interpreting the code. It's totally irrelevant if the work started after the 90 days, and mistakes were made. There is an injustice. But the law is clear. And based on section 7.8.11 interpretation, an area variance is required before Mr. Ungerland can proceed.

Mr. Hand commented that it was clear to him that mistakes have been made, and it's unfortunate. He agrees with Mr. Feinstein in that the real issue is the interpretation of 7.8.11 Are there possibly buildings in the town higher than the 18 feet variance? Perhaps, but mistakes were made and these did not get caught.

Ms. Dietrich agreed with Mr. Hand and Mr. Feinstein, and added that a variance may take care of the problem.

Mr. Feinstein commented that the board invites Mr. Ungerland to make an application to the Zoning Board for an area variance and the board will get it on the agenda as quickly as we can.

Mr. Ungerland stated he felt that the issue should be resolved tonight. That the work was stopped illegally, and he was forced to hire an attorney. He feels the structure will not affect the neighbor's view. He feels he shouldn't be the one who is being taken advantage of on a mistake the town made. This was not being done vindictively. This was the only site on the property that was appropriate for the barn.

Mr. Feinstein commented that this is all good information when he comes before the board with an area variance application. In the meantime, Mr. Ungerland is encouraged to work something out with your neighbors.

Mr. Ungerland asked Mr. Heath if there was a way to work it out now, and Mr. Heath replied no, for several reasons.

Mr. Moore wanted to clarify the issue of timing of the stop work order and that if this case if this ends up on an appeal, asks the board to address the issue.

Mr. Feinstein replies that the 90 day window point is moot, and that work cannot go forward anyway until the variance is obtained

Leslie Mauro stated that the work did not commence within the 90 day period, and that there was an area variance that should have been obtained.

Mr. Moore is concerned regarding filing an Article 78 to determine the 90 day issue, that the court will say the ZBA did not address this issue.

Ms. Mauro stated there was conflicting testimony regarding when work began on the project.

Mr. Ungerland stated that there was a mistake, and something happened. He followed the rules, he never deceived anyone, and now he's paying the price. He feels this needs to be resolved tonight. He does not want to be held accountable for the mistake the town made.

Mr. Feinstein told Mr. Ungerland that he is being given the opportunity to get an area variance, and that issue cannot be resolved tonight.

Mr. Feinstein made a motion, that based on the interpretation of section 7.8.11 of the LUR this work requires an area variance regarding building height. Ms. Dietrich seconded the motion.

Mr. Hand stated that he understands the issue, and that it's unfortunate. He stated that it's the board's duty is to enforce the law. He encourages both sides to discuss alternative and resolve

A roll call vote on stating that this work requires an area variance.

Ms. Dietrich – Yes

Mr. Hand - Yes

Mr. Feinstein – Yes

Motion to adjourn made by Mr. Hand, seconded by Mr. Feinstein, and all in favor.

The meeting was adjourned at 8:35 pm.

Respectfully Submitted,
Beth Mooney, Secretary at this meeting, and Town Clerk
June 9, 2016