

MINUTES OF THE TOWN OF WAYNE
ZONING BOARD OF APPEALS
June 1, 2020

The meeting opened at 6: 30 PM with a roll call of the members. The meeting was held via Zoom Web conferencing.

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

ALSO PRESENT: Tony Miller for Jepson variance, Mr. Welch for Finger Lakes Sunsets, LLC, Chris Toomey

MINUTES:

Mr. Feinstein made a motion to approve the minutes of the May 4, 2020 meeting minutes as presented, seconded by Ms. Dietrich. Minutes approved.

NEW BUSINESS:

AREA VARIANCE APPLICATION NO. 10v20: Public Hearing

Jepson Property located at 12121 Keuka Village Road, Town of Wayne. Non-conforming structure 3.A.4.b.5 Alteration, expansion of structure LUR -1

The committee reviewed the application which proposes to change an existing deck in the north/eastern corner of the house into a sunroom (11'8" x 11'10") thereby extending the new standing seam metal roof over the side door. This is a non-conforming lot, pre-existing non-conforming structure. Tony Miller, the contractor, briefly presented the plan to repurpose the existing deck into a sun room. There are no setback issues and the footprint of the structure remains the same.

Public comments opened. There were no letters or persons wishing to comment on the project. Public comments Closed.

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: No.

Ms. Dietrich made a motion, seconded by Mr. Feinstein to grant approval according to the plans submitted on 5/14/2020. The motion was unanimously approved.

OLD BUSINESS:

Finger Lakes Sunsets, LLC

Mr. Hand shared with the board and Mr. Welch the result of the Town lawyer's research on property lines and jurisdiction on the lake side of a property:

1. The State of New York owns the submerged land and overlying water of Keuka Lake. The property boundary between the State's property and a shoreline property owner's property is the **low-water mark**, which for Keuka is an elevation of **712.54 ft.** above sea level, using NGVD29 datum.
2. The State Department of Environmental Conservation (DEC) regulates the use and development of the land between the low-water mark and the mean high water mark, even when this property is privately owned. The **mean high water mark** for Keuka is an elevation of **713.5 ft.** above sea level, using NGVD29 datum.
3. Regardless of the current actual physical location of the shoreline (which may have been modified by fill, a seawall, or other manmade changes), the property boundary line is still the natural low-water mark, and the natural mean high water mark is still the water side boundary of state regulated area.
4. Property surveys define property boundaries as described in deeds, some of which may have originated prior to creation / acceptance of the low-water mark boundary. As a result, many surveys do not indicate the official property boundary. It appears that surveyors typically do not provide this on a survey, unless defined in the deed, or requested by the property owner.
5. The current Town of Wayne land use and zoning regulations define lakeside setbacks from the mean high water mark. Therefore, variance request documents for shoreline properties need to indicate the natural mean high water mark on them.
6. Surveyors use common accepted practices in defining the natural mean high water mark for manmade altered properties. For example, if a property currently has a manmade seawall filled with soil, and the neighboring properties have a natural shoreline, then they will indicate where the mean high water elevation is on the neighboring property boundaries, and draw a tie line between these points, which then defines the mean high water mark for the altered property.

Mr. Hand then stated that the landowner owns to the low-water line, however the NYSDEC controls the use of land from the mean high water mark to the low-water line. Mr. Hand explained that the discussion on the deck cannot proceed until the high water mark is defined on a survey or other appropriate document. Once the line location is known the town can consider granting a variance up to the mean high water mark. NYS DEC has to approve any construction from the high water line towards the lake.

The Town has always measured setback from mean high water marks and will continue that practice. Therefore the next steps are for Mr. Welch to provide a survey that indicates the high water mark on the property, and Mr. Welch agreed that was appropriate.

Other business

A short discussion ensued on ideas on how to identify potential members for the zoning board. Chris Toomey asked about the planning board meeting and was informed a meeting of that board would take place soon.

The meeting adjourned at 7:03 PM