

MINUTES OF THE TOWN OF WAYNE  
ZONING BOARD OF APPEALS  
December 7, 2020

The meeting opened at 6:36 PM with a roll call of the members. The meeting was held via Zoom Web conferencing and in person at the Town Hall.

	PRESENT	ABSENT	LATE
MEMBERS: Wayne Hand, Chair	<u>X</u>	<u>  </u>	<u>  </u>
Bill Feinstein	<u>  </u>	<u>X</u>	<u>  </u>
Candy Dietrich	<u>X</u>	<u>  </u>	<u>  </u>
David Westcott, alt.	<u>X</u>	<u>  </u>	<u>  </u>
Jon Serdula alt.	<u>X</u>	*voting member	<u>  </u>
Gill Harrop, CEO	<u>  </u>	<u>X</u>	<u>  </u>

ALSO PRESENT (via Zoom and **In-Person**) : Kerry Simmons, Sean Facklam, Luisa Martin, Jim Churchill, Marty Castellana, Randy Wilcox, John Webb, “Dana’s Iphone,” **Richard Morrison, Greg Blessing, Lauri Howell.**

**MINUTES:**

Ms. Dietrich made a motion to approve the minutes of the November 2, 2020 meeting minutes, Mr. Serdula seconded, minutes approved.

**NEW BUSINESS:**

Mr. Serdula will act as a voting member in Mr. Feinstein’s absence.

**Appeal No. 26V20: John & Dana Webb.** Property located at 11463 East Lake Road, Town of Wayne. Seeking relief expansion of pre-existing non-conforming structure. Sec 3,4.b.5.

There were no representatives on for the Webbs on Zoom or in-person so the case was tabled until representatives were present.

**Appeal No. 27V20: Richard Morrison.** Property located at 14720 State Route 54, Town of Wayne. Seeking approval for expansion of a pre-existing non-conforming structure and setback relief less than 50’. Sec 3,4.b.5

Mr. Morrison explained his need to expand outdoor seating to comply with the current Covid -19 seating guidelines. He would like to cover the existing deck and add on an additional 34’x 20’ deck area. Which Mr. Hand indicated would be about a 30% increase.

Public Comments were opened.

Mrs. Dietrich noted that the board had already received emails from neighbors tailing concerns about parking, noise, building under powerlines, and permanently increasing capacity.

Mr. Blessing read the letter he had already provided the board detailing the above concerns which also pointed out that the septic system is designed for 75 people and the original special use permit was for a small farm brewery tasting room.

Please see attachments at the end of the minutes for other letters.

Jeff Martin next spoke to the noise created by the establishment as the tasting room have evolved into a full bar with permanent speakers mounted outside for music and bands playing on the weekends. Mr. Martin stated that sound from the Keg and Barrel can be heard inside his home, with the windows closed.

Lauri Howell testified to her own experience of nearly having an accident when turning onto Rt 54 from Hyatt Hill road. She indicated that cars parked alongside the roads (Hyatt and 54) narrowed the travel lane and also blocked line of sight, making travel especially dangerous.

Public comments were closed.

Mr. Hand said that many of these issues need consideration by the planning board and that the zoning board might want to refer this case to planning board for preliminary review. Mrs. Dietrich made a motion to table the discussion of pending feedback from the planning board. Mr. Serdula seconded the motion and it was unanimously approved.

### **Webb appeal**

The Board returned to take up the Webb project as now the Webbs had joined by Zoom.

The project entails keeping the footprint of the existing house the same as siding, windows and roof are replaced. A small change to the roofline would allow for a loft/expansion of the attic to become living space.

Public Comments were opened. No comments. Public comments closed.

Mrs. Dietrich made a motion to approve modification of 3<sup>rd</sup> floor to include a loft area providing it be built according to the plan submitted on 11/11/2020. The motion was approved.

**Appeal No. 28V20: Alta Schallehn.** Property located at 13840 State Route 54, Town of Wayne. Seeking relief from land use regulations Sec. 1.0 regarding subdivision setback and bulk requirements.

Mr. and Mrs. Simmons represented Ms. Schallehn's interest at the meeting and conveyed the family's desire to shift some of the property on Schallehn's lot to Simmons lot. The net effect of this subdivision and subsequent lot line adjustment would be to make Simmons lot conforming (5+ acres) and Schallehn's lot non-conforming (<5 acres).

Public Comments were opened. No comments. Public comments closed.

Mr. Hand did comment on the lack of hardship issues associated with this request and whether this might be setting a precedent. Mrs. Dietrich commented that this was an interfamily transfer of land and the net result was the same, one conforming lot, undersized lot as is the case now.

Mrs. Dietrich made a motion to approve the variance and allow for the subdivision and subsequent lot line adjustment. Mr. Serdula seconded the motion. It passed.

**Appeal No. 29V20: Martin and Maureen Castellana.** Property located at 14191 Keuka Village Road, Town of Wayne. Seeking relief for non-conforming setbacks. Sec 3,4.b.5.

Mr. Castellana presented a need to replace a rotting, existing deck and to expand the deck 8' closer to the water. This larger configuration of the deck would make it fit the scale of the home better. The issue is that the home was built in 1879 long before setbacks and abuts the lane that is the town boat launch.

Public Comments were opened. No comments. Public comments closed.

Mrs. Dietrich made a motion to approve the variance and allow replacement of the deck and expansion of the new deck six (6) feet to the West and one (1) foot to the South as delineated in the plans submitted. Further, the new deck cannot push any further North than the footprint of the existing deck. Mr. Serdula seconded the motion. It passed.

**Appeal No. 30v20: Bald Eagle Trust.** Property located at 14899 East Lake Road, Town of Wayne. Seeking relief expansion of pre-existing non-conforming structure. Sec 3,4.b.5

Jim Churchill and Dean Facklam represented the trust via zoom. Jim shared that the Jet Ski lift and the existing canvas covered outdoor areas would be combined under a more conforming structure. The new structure would be slightly larger by 200 Sq Ft. but that the overall roofline would be lower and less visually intrusive than the current structures.

Commented [P&Z1]:

Public Comments were opened. No comments. Public comments closed.

Mr. Serdula made a motion to approve the appeal and allow for slight expansion of the new structure as per the drawings and plans submitted on the building plan dated 11/24/2020. Mr. Hand seconded the motion. The motion was approved.

**Commented [P&Z2]:**

### **Unfinished Business**

No open business at this time.

### **Discussion**

A short conversation on the viability and desirability to continue to meet via Zoom, not only for Covid safety, also to make the meetings more accessible to those who might reside outside of Wayne in the off season months.

**Adjournment** The meeting adjourned at 8:10PM

Submitted by: Amy Gush, Board Secretary.

Please pass to the Zoning Board of Appeals.

Dear Town of Wayne Zoning Board of Appeals,

My name is Daniel Hovey. I am an owner, along with my family, of 21 acres of land directly adjacent and north of the Keg and Barrel. I, along with my family, also own a cottage at 14221 Keuka Village Road. I am writing the board in reference to Appeal No. 27V20 Richard Morrison. I do not support the expansion of the existing outdoor deck for several reasons. I feel any expansion of customer capacity would be detrimental to our neighborhood and for the future use of my family's land. My concerns are as follows:

1. Parking – Parking is currently inadequate. Expanding customer capacity would only make the current situation worse. The Keg and Barrel's parking lot gravel currently goes beyond our property line. Before the Keg and Barrel opened we had the property line marked with rebar stakes and orange rubber toppers. Customers quickly destroyed these by parking their cars across the property line. Mr. Morrison attempted to remedy the behavior by putting in poles where the rebar stakes were placed, but they are now pushed over or gone. Mr. Morrison committed to stretching a line or wire between the poles to better define the border but that was never done. Customers also routinely throw their empty beer cans onto our property from the parking lot. If this establishment was operated as originally requested (micro-brewery/tasting room) I suspect a different customer base might be attracted to the Keg and Barrel. The Keg and Barrel has turned into a standard Bar. During mid to large events parking is a disaster. Customers park along both sides of Route 54, Hyatt Hill Rd. and Keuka Village Rd. It is very dangerous. Mr. Morrison may try to expand his available parking area by further excavation. He did this when he first bought the property without applying for the proper special use permit. He carved out a 90 degree 12 foot high cut against our property line that continues to erode to this day. He put up a partial retaining wall after the code enforcement officer intervened but is not fully effective and we are losing property.
2. Noise – Music and conversations from the outdoor deck can be heard in our cottage. This situation was created by his own action to take down an 80 foot long section of trees across Route 54 without regard to how it would affect the residential neighborhood. The greatest amount of noise is during live music concerts on Friday nights. You can't even relax in the cottage at that point. Expanding the deck 20 feet closer to Keuka Village Road will just make the noise worse. Although the Keg and Barrel is

located in the Corridor Zone it borders a fully residential zone. We should not be subjected to retail type environments.

3. Septic System Capacity – Increased customer capacity will require a septic system capacity review. Mr. Morrison's leach field which is in an open field behind the motel building is an evaporation leach field where a failure would flow onto our property.

4. Power Lines – There are power lines above the ground where the existing deck would be expanded. I do not believe this would be a very safe approach.

I request the Zoning Board disapprove this request to expand the outdoor existing deck.

Sincerely,

Daniel Hovey

Dear Town of Wayne Zoning Board of Appeals,

My name is Elizabeth Vaughan. My family owns 21 acres of land directly adjacent and north of the Keg and Barrel. My family owns a cottage at 14221 Keuka Village Road. I am writing the board in reference to Appeal No. 27V20 Richard Morrison. I do not support the expansion of the existing outdoor deck for several reasons. I feel any expansion of customer capacity would be detrimental to our neighborhood and for the future use of my family's land. My concerns are as follows:

1. Parking – Parking is currently inadequate. Expanding customer capacity would only make the current situation worse. The Keg and Barrel's parking lot gravel currently goes beyond our property line. Before the Keg and Barrel opened we had the property line marked with rebar stakes and orange rubber toppers. Customers quickly destroyed these by parking their cars across the property line. Mr. Morrison attempted to remedy the behavior by putting in poles where the rebar stakes were placed, but they are now pushed over or gone. Mr. Morrison committed to stretching a line or wire between the poles to better define the border but that was never done. Customers also routinely throw their empty beer cans onto our property from the parking lot. If this establishment was operated as originally requested (micro-brewery/tasting room) I suspect a different customer base might be attracted to the Keg and Barrel. The Keg and Barrel has turned into a standard Bar. During mid to large events parking is a disaster. Customers park along both sides of Route 54, Hyatt Hill Rd. and Keuka Village Rd. It is very dangerous. Mr. Morrison may try to expand his available parking area by further excavation. He did this when he first bought the property without applying for the proper special use permit. He carved out a 90 degree 12 foot high cut against our property line that continues to erode to this day. He put up a partial retaining wall after the code enforcement officer intervened but is not fully effective and we are losing property.
2. Noise – Music and conversations from the outdoor deck can be heard in our cottage. This situation was created by his own action to take down an 80 foot long section of trees across Route 54 without regard to how it would affect the residential neighborhood. The greatest amount of noise is during live music concerts on Friday nights. You can't even relax in the cottage at that point. Expanding the deck 20 feet closer to Keuka Village Road will just make the noise worse. Although the Keg and Barrel is located in the Corridor Zone it borders a fully residential zone. We should not be subjected to retail type environments.

3. Septic System Capacity – Increased customer capacity will require a septic system capacity review. Mr. Morrison's leach field which is in an open field behind the motel building is an evaporation leach field where a failure would flow onto our property.

4. Power Lines – There are power lines above the ground where the existing deck would be expanded. I do not believe this would be a very safe approach.

I request the Zoning Board disapprove this request to expand the outdoor existing deck.

All the best,  
Elizabeth Vaughan

ZBA Dec 7, 2020 minutes Attachment C

Please pass to Zoning Board of Appeals

14213 Keuka Village Roa  
Dundee, NY 14837

December 5, 2020

Town of Wayne Zoning Board of Appeals  
Town of Wayne  
9772 Silsbee Road  
Wayne, NY 14893

Subject: Appeal No. 27V20: Richard Morrison

Dear Zoning Board of Appeals,

We are writing with serious concerns in reference to the proposed Keg and Barrel Brewing Company deck expansion facing St. Rt. 54, which would be in violation of the Town of Wayne Land Use Regulations. We are in opposition to the deck expansion only and not of the roof addition to the existing deck. My concerns are outlined below:

- a. Noise - When Mr. Morrison applied for a Special Use Permit to open this establishment it was presented as a start-up Micro-Brewery tasting room similar to other tasting rooms along the corridor zone (e.g. Ravines). He was asked to be a "good neighbor." Since then, it has evolved into a full blown bar with live outdoor musical entertainment events. Permanent outdoor speakers are also installed above the existing deck. Shortly after the Keg and Barrel opened Mr. Morrison also had a 80 foot robust tree stand cut down to improve the view from the existing deck. This tree stand was across St. Rt. 54 and provided Keuka Village Road homes below with a noise barrier from the Keg and Barrel and associated highway noise. As a result, noise from the existing outdoor deck flows down the hill and disrupts the quality of life on KVR. Our house is directly below the Keg and Barrel. If our front door or windows are open, customer conversations and music from outdoor speakers can be easily heard in our lakeside living room. We have to close our doors and windows just to listen to the TV or our own choice of music. During live outdoor musical entertainment events, usually on Friday nights, sound reverberates through the house even with doors and windows closed. By expanding the existing deck bringing the noise 20 feet closer and increasing the number of customers I can only imagine the increased noise we would have to endure.
- b. Parking – This has been a problem and safety issue from the beginning. Although Mr. Morrison has attempted to expand parking, his solutions have been inadequate. His property is too small for even the current customer capacity. During certain events customers fill existing parking spaces, then overflow on to both sides of St. Rt. 54, upper and lower Hyatt Hill Road and Keuka Village Road. Customers have also parked on

private residential properties, even after the resident posted no parking signs. This chokes down lanes on normal St. Rt. 54 traffic and impedes the intersection at Hyatt Hill Road and also causes dangerous situations surrounding the boat launch. Turning onto St. Rt. 54 from Hyatt Hill Road is a hazardous proposition due to restricted visibility.

Increased customer capacity that the outdoor deck expansion accommodates would exacerbate the current parking limitation, traffic conditions and overall safety of customers and area residents.

a. Existing parking spaces would also be reduced by the outdoor deck expansion. There are several parking spaces directly below the existing deck that would be covered up.

c. Customer Behavior – The Keg and Barrel accommodates small tour busses. Last fall, a small Fitzgerald tour bus came down to Keuka Village Road and let off a very drunk couple. Then the tour bus turned around and went up to the Keg and Barrel. In the meantime, the couple walked over to the culvert next to our home and in full view, the female stepped down to the creek, pulled down her pants and urinated into the creek. Friends following in a car picked them up and they went up to the Keg and Barrel.

Whereas we do not blame the Keg and Barrel for this incident it clearly is evidence of the type of undesirable peripheral activity neighbors must endure by young customers of our bars nearby. We don't need increased customer capacity of that kind at the Keg and Barrel.

d. Septic Capacity – I would think that a septic system review should be conducted given the increase in customer capacity. A system failure due to increased use would be detrimental to nearby residents and Keuka Lake. As I understand it, the leach field behind the motel portion of the property is an evaporation leach field which can become laden with rain and could not be a solution for the parking issue.

e. High Voltage Power Lines – Power lines are present above the proposed deck expansion. This is a recipe for disaster. High winds travelling up and down Hyatt Hill Road in the last several years have taken down large trees along the utility right of way. Does this proposal require NYSEG approval?

f. Deck Construction – As a sideline concern, during live outdoor musical entertainment events, the deck is packed with customers shoulder to shoulder and possibly exceed load design limits. The deck expansion would be constructed above an area that slopes away from the current structure and would require even taller supports. A collapse might happen.

g. COVID 19 – The applicant may try to justify this expansion due to social distancing requirements. This would be a red herring since he currently uses outside lawn areas in addition to the existing outdoor deck to achieve social distancing. The requirement for social distancing won't be here forever and with the advent of vaccines might be gone by next summer.

An expanded outdoor deck permanently increases customer capacity driving up neighborhood noise and parking issues. This is a public safety issue and would degrade the quality of life in the neighboring residential zone.

Regards, Jeff and Lulu Martin

DATE: DECEMBER 3, 2020

FROM: GREGORY H. BLESSING  
10205 HYATT HILL RD.  
WAYNE NY 14893

RE: VARIENCE # 27V20 Richard Morrison

Proposal # 1

Construction of a roof to cover existing deck.

I have no problem with the construction of a roof over the existing deck. It might actually cut down on the noise from the live music, outdoor speakers and the crowd.

Proposal # 2

Construction of a 34' X 20' deck facing State Rt. 54.

1. Parking has been an issue since the popularity of the establishment has increased. There have been numerous occasions where there have been up to twenty cars parked on the east side of rt. 54 both north and south of the Hyatt Hill intersection. Vehicles also park on the west side of rt. 54 again blocking the view for safe entry onto rt. 54. This has created a serious problem with trying to pull out of Hyatt Hill rd. safely. The state has had "No Parking Any Time" signs posted for over twenty years to help keep the intersection safe, but customers choose to ignore them. There have been times where cars park on Hyatt Hill rd. also causing a traffic flow problem. Where will the increased customer count park safely. I have had to call the state police on at least two occasions about this matter.
2. There is a 13,000 volt high voltage power line over the proposed location of the deck. Construction under a power line is NOT

PERMITTED. NYSEG has a twenty foot right of way to ensure the public's safety. Another safety issue.

3. Septic system capacity. The existing septic system was originally designed for a seventy five seat restaurant. The increase in the amount of customers could potentially cause a system failure with the increase in effluent. The motel is also connected to the system.
4. Noise! During the summer months, especially on the weekends, the noise levels can be annoying. I cannot sit on my porch to enjoy a nice summer evening without hearing every song, when they have live music, the outdoor speaker's cranked and loud conversation. Not to mention an F bomb every now and then. This proposal will inevitably increase the noise levels.
5. The original use was to be a small brew pub. Which I had no problem with. But it has come to be a party house!
6. Hardship! One of the requirements for a variance is for the applicant to prove a hardship. I see no hardship in this case. The applicant has plenty of space to conduct his business as originally proposed. The only reason for this variance is for the applicant to increase his revenue.
7. I request that the zoning board revisit the terms of the special use permit issued by the Town of Wayne Planning board. To the best of my knowledge this business was supposed to be a small micro-brewery with a tasting room, not a full blown bar/party house serving liquor, wine and beer.
8. I feel the approval of said variance will be detrimental to the community!