

MINUTES OF THE TOWN OF WAYNE  
ZONING BOARD OF APPEALS  
February 1, 2021

The meeting opened at 6:35 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>	___	___
Bill Feinstein	<u>X</u>	___	___
Candy Dietrich	<u>X</u>	___	___
David Westcott, alt.	<u>X</u>	___	___
Jon Serdula alt.	<u>X</u>	*voting member	___
Gill Harrop, CEO	___	<u>X</u>	___

ALSO PRESENT (via Zoom and In-Person): Jeff Martin, Lulu Martin, Greg Blessing, Laurie Howell, Tom Dominick, Rhett Nelson, Vincent Nykiel.  
Shona Freeman

Mr. Feinstein made a motion to approve the minutes of the January 2, 2020 meeting minutes. Mr. Hand seconded; minutes approved.

Mr. Serdula will act as a contingent voting member.

**NEW BUSINESS:**

**Appeal No. 01V21:** Thomas Dominick. Property located at 9291 Spruce, Town of Wayne. Seeking relief expansion of pre-existing non-conforming structure and side setback of less than 8'. Sec 3,4.b.5.

Mr. Hand invited Mr. Dominick to explain the application for the variance and the new plan for the plot. Dominick said that plans had changed and now they wished to connect the two existing structures on the land to make one home that will accommodate the family's needs.

The plan would include connection the two buildings and the creation of a new roofline that would be 25' tall, but still within code. There would be no change in the setback from the neighboring property lines.

John Serdula joined the meeting at 6:45PM via zoom.

Public comments were opened.

Vince Nykiel voiced a concern over wells dug in the vicinity of the proposed site. He also stated that he hoped that Spruce Road would be maintained and any damage incurred as a result of the construction be repaired. He then went on to say that he was supportive of the project and thought the design of the new home would blend nicely with existing properties. There were no written comments.

Public Comments were closed.

The Board deliberated on the new plan. There are no setback issues or other concerns.

They next considered the TEST questions: No area variance will be granted without a consideration by the Board of the following factors:

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties: Yes \_\_\_\_ No 4 \_\_\_\_
2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: Yes \_\_\_\_ No 4 \_\_\_\_
3. Whether the requested variance is substantial: Yes \_\_\_\_ No 4 \_\_\_\_
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: Yes \_\_\_\_ No 4 \_\_\_\_
5. Whether the alleged difficulty was self-created: Yes 4 \_\_\_\_ No \_\_\_\_

**DETERMINATION OF ZBA BASED ON THE ABOVE FACTOR:**

\_\_\_\_ the Benefit to the Applicant DOES NOT Outweigh the Detriment to the Neighborhood or Community and therefore the variance request is denied.

4 the Benefit to the Applicant DOES Outweigh the Detriment to the Neighborhood or Community.

Motion was made to approve the plan to connect the two existing cottages to form one structure, it is to be built according to the plans submitted with building permit 14-21 on January 19, 2021.

Motion was approved, 4 yeas, 0 nays.

**Unfinished Business**

The Board took up appeal no.27v20, Richard Morrison, Keg and Barrel, having received the review from Steuben County Planning. The County approved the application with the following comments:

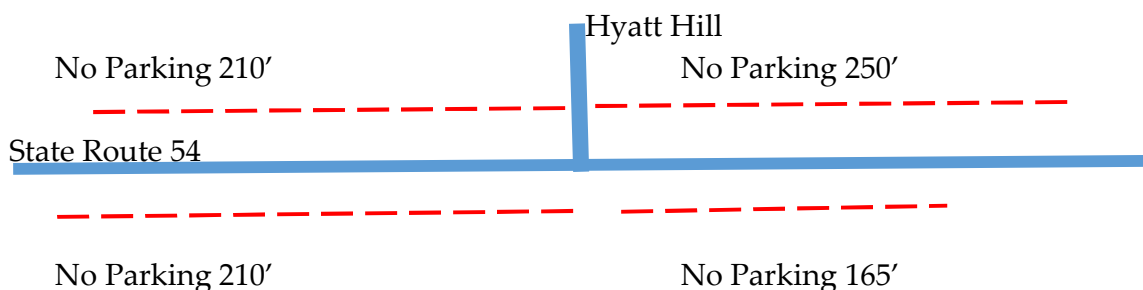
“Parking and traffic safety is a concern on this site. Neighbors seem to have an issue with parking specifically on Hyatt Road and State Route 54. Any cars parking along the right of ways of Hyatt Rd. and state route 54 should not be tolerated. This creates a hazard for cars driving along St. Rte. 54 and for ingress/egress of emergency vehicles both to the Keg and Barrel and along Hyatt Rd.

According to the Town of Wayne LUR, the Keg and Barrel is required to provide parking for 1 car for every 100 sq ft. in addition to one spot for each employee. This does not include the additional parking required for the motel on site.

The Steuben County Planning Department approves this project subject to the applicant being able to provide parking as required by the Town of Wayne LUR.

It is also recommended that the ZBA coordinate with NYS DOT in order to alleviate any parking or traffic safety concerns prior to approval.”

Mr. Hand pointed out that after discussions with Martin Butler, NYDOT official in Hornell, and with law enforcement personnel, that parking on state highways is allowed except for areas marked “No Parking” and within 100 feet of an intersection. Currently St. Rt.54 is marked for No Parking on the north bound side 250’ south of the Hyatt Hill Intersection and 210’ north of said intersection. On the south bound (lake side travel lane) St Rt. 54 is marked No Parking 165 feet south of Hyatt Hill and 210’ north of Hyatt Hill.



Mr. Hand pointed out that the county’s concerns for parking – both on property and along the roadways – would be honored in any resolution of this appeal.

Mr. Feinstein then clarified the role of the Zoning Board in this matter. Zone Board’s jurisdiction is to look at two issues:

- 1) The appeal for expansion of a pre-existing non-conforming structure – adding a roof to the current deck area, and the addition of a 24x24 deck.

2) The appeal for setback relief based on the LUR for that district.

Other issues related to the project would fall under the purview of the Planning Board during site-plan review.

Mr. Feinstein also stated that the board has carefully reviewed previous letters and public comments on this project and would only entertain any new information during public comments.

Public Comments opened.

Mr. Martin spoke to a concern that the additional deck space increases the capacity of the restaurant and decreases the safety of the neighborhood with increased parking possible on streets and along the highway. He also spoke to a potential for the business to violate LUR by “creating vibrations beyond the property lines.” When live music is played at the Keg and Barrel Mr. Martin states his “whole house reverberates from the sound.” Further, Mr. Martin feels that approving these appeals is a detriment to the entire neighborhood.

Mr. Blessings stated that the reason stated for the need to increase and cover the deck was the COVID 19 capacity restrictions - which are only temporary, not a permanent hardship, and yet this will result in the increase in patrons at the Keg and Barrel, increasing the noise, and that will be permanent.

Public Comments were closed.

The Board began deliberations on the matter. Mr. Hand indicated that law enforcement should be enforcing parking and traffic safety where there are signs prohibiting parking. Mr. Blessing interjected that he has call the police before and they did nothing.

Mr. Feinstein asked Mr. Morrison if the previously identified concerns about the placement of the deck and NYSEG lines had been addressed. Mr. Morrison replied that he had conversations with NYSEG officials and as a result of those conversations had changed the deck plan to avoid building under the power lines.

Mr. Hand asked Mr. Morrison if he had a plan for on-site parking that addressed the need for the required number of parking spaces? Mr. Morrison responded that he did have enough spaces. The identified need is 44.24 spaces. Mr. Morrison indicated that there is already enough space for 51 parking spaces and with some modification of the property that could possibly be expanded to as many as 67 spaces.

Mr. Feinstein said that he felt it is incumbent on the zoning board to support and incorporate the County’s concerns about parking and that all parking for the

business should be on-site. The County does not want to see cars parked on Hyatt Hill Rd. or St Rt 54 (beyond the no parking zone). Also, He indicated that any plan for a private land owner to allow parking for the business on their land would likely be a violation of the LUR.

Mr. Feinstein reiterated to the board members that they are looking only at the request to modify the structure, not the impacts of any change in business operations that might flow from the structural change. He also encouraged the neighbors who are opposing this action to meet with Mr. Morrison to discuss any compromises that would satisfy each party before the issue moves forward for consideration by the planning board.

Mr. Hand called for the secretary to lead the board through the 5 questions that must by law be considered before granting an appeal.

REQUEST RELIEF FOR THE FOLLOWING: Expansion of a pre-existing non-conforming structure and setback relief from Hyatt Hill Road.

TEST: No area variance will be granted without a consideration by the Board of the following factors:

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties: Yes \_\_\_\_ No 4 \_\_\_\_
2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: Yes \_\_\_\_ No 4 \_\_\_\_
3. Whether the requested variance is substantial: Yes \_\_\_\_ No 4 \_\_\_\_
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: Yes \_\_\_\_ No 4 \_\_\_\_
5. Whether the alleged difficulty was self-created: Yes 4 \_\_\_\_ No \_\_\_\_

DETERMINATION OF ZBA BASED ON THE ABOVE FACTOR:

\_\_\_\_ the Benefit to the Applicant DOES NOT Outweigh the Detriment to the Neighborhood or Community and therefore the variance request is denied.

4 the Benefit to the Applicant DOES Outweigh the Detriment to the Neighborhood or Community.

Mr. Feinstein made a motions to approve the appeal for the expansion of a pre-existing, non-conforming structure and for setback relief of 25' from the Hyatt Hill road right of way. With the condition that

- 1) There shall be provided sufficient on-site parking to comply with Town of Wayne LURs
- 2) The number of on-site spaces needed and available can be confirmed at the site review meeting of the Planning Board.
- 3) No Keg and Barrel costumer parking shall be permitted on any of-site property
- 4) Mr. Morrison shall support law enforcement efforts to enforce existing no parking zones on 54 and Hyatt Hill road and will further support any efforts to expand the NY St. Rt. 54 no parking areas.

Ms. Dietrich 2<sup>nd</sup> the motion. The motion passed with a vote of 4 yeas, 0 nays.

**Discussion**            None

**Adjournment**        The meeting was adjourned at 7:55 PM

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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 Road  
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 Morrision

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. Morrision 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. Morrision 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. Morrision 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!