

Minutes of the Town of Lake George Zoning Board of Appeals meeting held on June 11, 2014 at 6:00 p.m., at the Town Center, 20 Old Post Road, Lake George, New York.

**Members Present:** Whitney Russell, Chairman  
Tom Jenne, Vice Chairman  
Peter Keating  
Peter Bauer  
Gary Moon  
Karen Hanchett, Alternate Member

**Also Present:** Keith Osborne, Adele Behrmann, Charles & Rona Berebbi, Matt Fuller, Esq., Tony Kypreos, Jack Gillette, Alan Stern, Robb Hickey, Kevin Tucker, Jeff Anthony and others.

The meeting was called to order at 6:04 p.m. by Chairman Russell.

**Acceptance of Minutes:**

A motion is introduced by Peter Keating; seconded by Tom Jenne to accept the minutes of the May 14, 2014 meeting.

Peter Bauer abstains from the vote since he was not in attendance at the last meeting.

Ayes: 4 Moon, Keating, Jenne, Chairman Russell  
Nays: 0  
Abstain: 1 Bauer

Motion carried.

**PUBLIC HEARINGS**

**Chairman Russell:** first item on the agenda was a Notice of Appeal #2-2014; we received a letter from the parties requesting that this be tabled again until next month which gets us to the second item on the agenda which is AV4-2014 for Charles Berebbi. This is a property over at 38 Stone Schoolhouse Rd; we read this in at the last meeting (Tom Jenne informs that it was two meetings ago) and started some conversations, requested that the applicant provide us with a survey which we received; did we open the public hearing the last time?

**Adele Behrmann:** you closed it but then re-opened it.

**Chairman Russell:** and so the public hearing is still open and then we'll have the applicant come up and we'll discuss the survey that was provided to us and open the public hearing and proceed from there.

**Kevin Tucker:** Matt Fuller is not here yet but is on his way; I honestly don't have much information on that but he will.

**Tom Jenne:** in that case we can move it to the back of the agenda.

**1. Area Variance Application AV7-2014 submitted by Bear Pond Ranch, LLC with Tony Kypreos as agent requesting 10 ft. of rear setback relief for a proposed expansion to existing deck for property located at 5 Mill Rd. Tax Map No. 277.02-1-59. Lot size is 3.26 acres. Zoning Classification is TC-A & RCM-S2B. Code reference is 175-16. SEQR Type is type 2.**

Tom Jenne reads the application into the record.

**A motion is introduced by Gary Moon; seconded by Peter Bauer to accept the application as read with the correction that the height will be between 8" and 12" and not 12 ft.**

**All in favor, motion carried.**

**Peter Keating:** I don't know if it makes a difference but I don't see an arrow depicting north on the map I have been provided.

Chairman Russell and Tom Jenne respond that it is indicated on the smaller version of the map.

**Tony Kypreos:** we just want to rip down the existing deck because it is broken and replace it.

**Peter Keating:** and so it is 20 ft. from the property line and not 5 ft.?

**Keith Osborne:** no, it is 5 ft. from the property line and he is requesting 20 ft. of relief.

**Tom Jenne:** right, but I think the problem is the placement of the porch correct? Because if it were on the other side of the building it would not be a problem because it is measured from the side that is away from the street.

**Tony Kypreos:** yes but my neighbor behind me at the motel said "Tony I don't really know why you're wasting your time; Ralph just re-did it." But Ralph doesn't do things like that.

**Tom Jenne:** yes but correct me if I am wrong but it is a fact that it is on the other side and that's why we're here.

**Keith Osborne:** right, it doesn't meet the rear setback which is why they're here.

**Chairman Russell:** what we're looking at is the deck; the house has nothing to do with this application. Does the property line actually go through the middle of that building?

**Keith Osborne:** it is pre-existing and non-conforming and the property line goes right through the living room.

Tom Jenne states that he has no further questions of the applicant.

**Chairman Russell:** with your submittal there is a three dimensional drawing which looks like it was done by Home Depot with a note that says approximately 8" to 12 ft. high; should that be 12" high?

**Tony Kypreos:** it should be inches; 12" high. It is really going to be 8" but we were asked to indicate the highest it can go which is 12".

**Chairman Russell:** it should then be corrected on the application. Does anyone else have any questions for the applicant?

No response.

**Chairman Russell:** ok, let's then open up the public hearing. The way it always works with me is that I will go row by row; when you come up speak into the microphone so Adele can get the minutes correct; introduce yourself and while you're up here please address the Board and keep the comments to the application that we are presently hearing.

**Jack Gillette:** hello I am Jack Gillette, the neighbor to the north. I don't see why he is here either; it should be a simple thing. My problem is that I was told one week ago by Jeff Tension that that is the old plank road and it is County property. So, the building is built on County property, the other neighbor's office is on County property also.

**Tom Jenne:** yes but that is a paper road.

**Jack Gillette:** no it is not. It is the plank road which is owned by the County.

**Peter Bauer:** what kind of documentation does Mr. Tension have to support this claim?

**Jack Gillette:** that's a very good question since I have been asking for that for almost two years because he says the same about me.

**Tom Jenne:** yes but we can't go on hearsay.

**Jack Gillette:** well it is in the courts already. I think that if it is a question on ownership why is that hearsay.

**Tom Jenne:** ownership of boundaries on a plank road would be something that you can say as a neighbor but not as to the property line.

**Jack Gillette:** I am not trying to open a can of worms. I am being treated this way on my side of the road and I feel that everybody should be treated the same way.

**Peter Bauer:** Keith do you have any insight as far as (not audible).

**Keith Osborne:** not too much, there isn't a lot of documentation out there.

**Peter Bauer:** has the County asserted any ownership on any of these properties?

**Jack Gillette:** they are asserting them over me right now or they are trying to and I am a direct neighbor and it is directly the same parcel of land that Dawn Martin owned.

**Tom Jenne:** ok, is the survey that was handed in with the application accurate?

**Keith Osborne:** absolutely.

**Tom Jenne:** we can as a Board take a legal document that we have in front of us in form of a survey for this parcel and accept it as being official.

**Keith Osborne:** yes, absolutely it doesn't matter if it is private land, County land, State land the bottom line is that the expansion is on Bear Pond Ranch's property and it is not going over that property; it extends 5 ft. from the property line. It is true that that property line is running right through the building.

**Jack Gillette:** and the County is saying that it is their property.

**Keith Osborne:** and that's fine but it does not have any bearing on the variance aspect.

**Peter Bauer:** hold on Keith; this is connected to a house where the rest of the house is a potentially disputed property and so we're allowed to put up a blind eye at the house that the deck is attached to?

**Keith Osborne:** as long as it doesn't cross that line, yes.

**Chairman Russell:** this is a pre-existing, non-conforming condition; we have places all over with houses built over property lines.

**Peter Keating:** I understand that but I guess what's in the back of my mind is that I don't believe at this point that we have the authority to grant someone to put something up on contested land.

**Tom Jenne:** I disagree.

**Chairman Russell:** and it is not on contested land.

**Tom Jenne:** the contested land is a hearsay issue; we have to base our decision on what we have in front of us that is factual. Factual is a survey that is saying that this scope of work is within the perimeters of Bear Pond.

**Jack Gillette:** I don't want to disagree with you. I had legal deeds for the property and the County is saying that it is not mine and so legal deeds don't mean anything to Jeff Tennison.

**Peter Bauer:** Tony, have the Macchios receive any type of correspondence from the County?

**Tony Kypreos:** no, not at all.

**Gary Moon:** and that discussion really doesn't have anything to do with this application.

**Chairman Russell:** as far as I am concerned if the County wants to take ownership of that property and claim that it is theirs they can take legal action.

**Tom Jenne:** I just want to make sure that we can move forward. We have a good survey; we have a good plot map in front of us correct?

**Keith Osborne:** yes, it is my determination that this is before you legally.

**Tom Jenne:** ok, good, I have no further questions.

**Chairman Russell:** ok, anything else Mr. Gillette?

**Jack Gillette:** no, I just wanted to tell you that I have the exact thing and I hope Tony gets it.

**A motion is introduced by Chairman Russell; seconded by Tom Jenne to close the public hearing.**

**All in favor, motion carried.**

**Peter Bauer:** Keith, you said it is your determination that this is legal, have you run this by counsel or is it your professional (interrupted).

**Keith Osborne:** no, it is what I do; it is my job to make these determinations.

**Tom Jenne:** I am ready to make a motion.

**Chairman Russell:** well before you do that let's have a conversation. According to the small scale drawing that we have, this deck is going to extend beyond the end of the building?

**Keith Osborne:** correct.

**Chairman Russell:** and do we know what the extension beyond the end of the building is? Is the current use of the building residential and will it stay residential?

**Keith Osborne:** yes.

**Chairman Russell:** my thinking is that we have a very unique situation with the property line going through the middle of the building. The original deck is 10 ft. x 14 ft. and the new one is 14 ft. x 41 ft.; the fact that it is extending beyond the building line means that we are increasing the length of encroachment towards the property line.

**Tom Jenne:** it doesn't matter since it is still a setback because it is within the perimeters of the property as being depicted here.

**Chairman Russell:** I understand that.

**Tom Jenne:** I understand your concern; I just want to point out that I see it more as a distance issue with what's given in front of us.

**Robb Hickey:** maybe I can shed a little light on this since I helped Tony and Bear Pond Ranch with this application. The closest point to the back of the property line because of the angle of the house and the angle of the property line is in that corner and it is 5 ft. and so the deck coming out is actually farther than the 5 ft. just because of the angle of both of them moving it away from the line and so it is not encroaching any closer by coming passed the house. In the office there is a map of a surveyed site plan by a licensed engineer, Matt Steed, that states that this property belongs to Bear Pond Ranch; the County may take some claim but it does not matter since it doesn't affect your opinion. It is a strange thing that he is asking for a rear setback because this is actually in front of the house.

**Tom Jenne:** but by everything that you have seen and I am sure that you've been in this position before as a Code Enforcement Officer it is within the Bear Pond's property.

**Keith Osborne:** yes; solely.

**Tom Jenne:** solely.

**Chairman Russell:** the only point I was trying to make is the fact that it is a massive deck compared to what was there and the encroachment is going to be extended beyond the existing building line and if no one else has a problem with that then (interrupted).

**Tom Jenne:** **right**, extended beyond the building line if you go by the north/south by not if you go by the property line.

**Chairman Russell:** I understand. Are there any other questions or comments from the Board?

**Peter Keating:** is there any consideration to ending the deck at the furthest point of the existing structure rather than going beyond it?

**Tony Kypreos:** they want to go beyond it because they want to put the barbeque past the house so it would be safer since they have swing set that is going to sit there and so it will be off the ground.

**Gary Moon:** do you plan on putting awnings or any kind of roofing?

**Tony Kypreos:** no absolutely not; it will be open to the air.

**A motion is introduced by Tom Jenne; seconded by Gary Moon to approve Area Variance AV7-2014 based on the following criteria:**

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

***No, it is not.***

- 2) Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance.

***It cannot be done without an area variance.***

- 3) Whether the requested area variance is substantial.

***Proportionally it may seem substantial but it is within the perimeters of reasonable.***

- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

***Absolutely not.***

- 5) Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

***Yes it was self-created but it should not be a criteria to preclude it from granting.***

**Ayes: 4 Moon, Bauer, Jenne, Chairman Russell**

**Nayes: 1 Keating**

**Motion carried.**

**2. Application for Area Variance AV8-2014 submitted by George's Holdings, LLC with Al Klein and the LA Group as agents with a proposal to demolish existing kitchen damaged by fire and replace and expand with new kitchen. Request is for 2 ft. of side setback relief as well as for the expansion of a non-conforming structure for property located at 3857 Route 9L. Tax Map No. 264.08-2-27. Lot size is 2.04 acres. Zoning Classification is RCH. Code reference is 175-7, 175-63.**

Peter Bauer reads the application into the record.

**A motion is introduced by Chairman Russell; seconded by Peter Keating to accept the application as complete.**

**All in favor, motion carried.**

**Alan Stern:** I am Alan Stern the architect with A R Stern Architects in Bolton and I will cover the building component and Jeff Anthony with the LA Group will go over the site improvements but basically after the fire we're here to rebuild the kitchen. Currently the kitchen is in the same proximity of where it is proposed to be built; currently the kitchen on the back is about half the size that is shown on this drawing now and we essentially just expanded it out towards the back. The current kitchen operation was actually contained in two structures and so we're really consolidating the two structures into one. Up on the hill there is a prep kitchen and then just down below it is separated by 5 ft. was the actual production kitchen. There are also other out buildings that were damaged in the fire and those we're taking down and so while we're adding just under 1300 sq. ft. we're actually removing 5200 sq. ft. of existing structures and various buildings and Jeff will show you that on the site plan. If anyone has been up there, there is a series of buildings up the hill and so the decrease of the built structures on the site will be almost 4,000 sq. ft. So basically the kitchen will be more efficient replacing what was there but in one building instead of two and we're trying to make it look a little rustic with probably board & batten siding with some stone trim around the back and will be a lot better looking than what it used to be. In doing that it was discovered that the salad bar area was a little tight and so the owner would like to add another three feet onto the structure for the salad bar; this expansion would add approximately 47 sq. ft. which is just enough to allow people to get around the salad bar. This is basically it for the structure. Are there any questions?

**Chairman Russell:** the only question I have as you stated and I just want to verify it, are the garage and the cabin going to be removed because of the fire and there is no intention of putting them back?

**Alan Stern:** correct.

**Tom Jenne:** it is not conforming now and so what would stop you from taking the kitchen that burned down as it was purchased and just rebuild the kitchen.

**Alan Stern:** to rebuild the kitchen as is we would have to do so within two structures and Jeff will show you on the site plan but once again the kitchen is here (he directs the Board to a map) but half the size and the other component of the kitchen was separated by 5 ft. of land and sat a little further up on the hill; the chef would have to traverse these stairs to go back to the prep kitchen where they did all the meat preparations, salads etc. and so all the meat was cut in the back room, stored in refrigeration units as well and then they carry it down into the production kitchen.

**Tom Jenne:** yes but what I am implying is that it is a pre-existing non-conforming way of doing business and so I have difficulty trying to find out why we should approve expanding pre-existing and non-conforming even further.

**Alan Stern:** if we were to rebuild the prep kitchen that burned down which is not shown here but it is on the site plan, it is actually closer to the property line than where we're proposing to join it up with the rest of the kitchen and I think it will be clearer on the site plan since we are actually encroaching less than we were before as well as having a lot less built area.

**Gary Moon:** this extension is also encroaching and not meeting the setback; have you considered actually just taking the extension that you're building and making so it complies with the setback requirement so that nothing that is being built will require a variance.

**Alan Stern:** that was briefly considered but by doing that it pushes the kitchen out of alignment with the circulation going in and out of the server area. (Referring to a map) this is the existing kitchen wall here, if we pushed everything this way, the hot line which is against this wall here and is a major corridor getting in and out of the kitchen it's almost like a circular route here, by pushing that off it will cut off part of the circulation path which is why we'd just like to take

this wall and extend it this way. The prep kitchen was actually sitting closer to the property line up in this area; we're taking part of it and actually moving it further from the property line by consolidating them.

**Keith Osborne:** I would just add and I am not an advocate for the applicant that it is a pretty good plan I think for what it's worth; the very back western corner is inches away from the setback but it tends to be more conforming as you go; that's something you may want to consider.

**Tom Jenne:** the thing is that both of those extra buildings are nowhere near being conforming.

**Keith Osborne:** that's true but they're being taken down.

**Tom Jenne:** right but I did they get there?

**Keith Osborne:** the owners bought it the way it was; the current owners did not put them there.

**Chairman Russell:** even if they put a jog in the kitchen, even if they were to build the wall crooked and make it meet the setbacks they'd still need a variance since they are expanding a non-conforming use and so they would still be here.

**Keith Osborne:** they're expanding a non-conforming structure because the use the same.

**Chairman Russell:** that's right a non-conforming structure.

**Alan Stern:** the overall net result is the reduction of the buildings next to the property line.

**Keith Osborne:** and for clarity if the expansion was outside of the setback of 10 ft. or greater from the property line and the building was non-conforming whatever that expansion is if it's conforming it wouldn't be an expansion of a non-conforming structure and they wouldn't be here.

**Alan Stern:** rebuilding the two part A and part B to the kitchen the way they are would not conform to the NYS Building Code because it would totally preclude all handicapped accessibility etc. and so we couldn't put it back the way it is and get a building permit.

**Jeff Anthony:** my name is Jeff Anthony from the LA Group and we are the site consultants. We commissioned a new survey which was recently completed by Dickinson Associates and if you look at this (directing the Board to a map) you'll see that the restaurant with the kitchen is right here, all these 3 or 4 structures plus a couple of sheds and a shed down here are structures that some were damaged by the fire but all of them will be removed and as I was explaining this kitchen was basically the primary kitchen for serving the food and the prep kitchen was in part of the building back here and so they had to carry the food that was prepped through an exterior space and into the other kitchen and so in order to rebuild this exactly the way it is we would have to use a part of that building that burned and still have the inconvenience of going outdoor to come indoor with the food.

A discussion ensues between Jeff Anthony and the Tom Jenne about the survey; Jeff explains that they just received the new survey which shows more buildings than the older survey that the Board received in their packages therefore more square footage will be removed and more violations will be cleaned out.

**Tom Jenne:** I understand but the problem is that I am looking at this here and I am getting 5,200 sq. ft. and then I just got a new survey only three minutes ago; it's kind of annoying. I am working off the information that I have and this is a whole new ball game.

**Jeff Anthony:** well it is a new ball game but a good one which means that we're removing much more structure on the site than first anticipated. We used the old survey when we first submitted the application because that is all we had and so what this shows is that basically this is the existing restaurant with kitchen and this little green part is the addition that is going on in addition to rebuilding the kitchen.

**Peter Keating:** and the extension to the salad bar area.

**Jeff Anthony:** yes; there was no intent to misrepresent this is just that we did not have a new survey in our hands and couldn't accurately show those buildings.

**Tom Jenne:** right; this was stamped with a date of 5/15/2014 and even though it looks bigger from physically looking at it than was depicted here it almost makes me feel like I am being misled by looking at this.

**Jeff Anthony:** there was no intent to mislead you.

**Tom Jenne:** I am sure there wasn't I am just saying that it is the feeling that I get when I see something that looks a little bit more realistic to what is going on and then I am handed this to make an assumption and base a decision upon it.

**Keith Osborne:** the focus is on the kitchen and not the structures because they are being demolished.

**Tom Jenne:** yes but also the main focus is on how much pre-existing non-conforming is going away and a balance test to how much positive impact could be produced which is part of the balance test; as a Board of Appeals member I want to make sure that we're going in the right direction with every decision and when you're looking at something that is taking a little bit of something away and putting twice the size of something back again, a more accurate depiction I think is crucial. This is just my statement, I am not leaning either way I am just saying that it annoys me.

**Peter Bauer:** Jeff did the numbers change as far as the net square footage to be removed?

**Jeff Anthony:** we never reported on the application the amount of square footage to be removed because we did not have an accurate drawing of it, we didn't know how much was there and so we didn't say how much but what is being removed is 5,237 sq. ft. of buildings.

**Peter Bauer:** is that the net at the end?

**Tom Jenne:** 5,237 sq. ft. is the footprint that is being removed and what is being added on as a total footprint?

**Jeff Anthony:** 1,262 sq. ft. for a net decrease in square footage of building space on the site of 3,955 sq. ft.

**Chairman Russell:** adding the fact that a very large portion of that building was non-conforming to begin with and so our overall distance of non-conforming setback is being decreased by a huge amount and even if we go off this map and in fact there were just these two buildings, one of those buildings is already encroaching over the line more (interrupted).

**Tom Jenne:** right, but if you add those two buildings going by scale you have a little bit over 900 sq. ft. and so when you take 900 sq. ft. and add on 1,262 sq. ft. you can see where my mind set is totally different then now with a ballpark of 5,237 sq. ft. changing into 1,262 sq. ft.

**Chairman Russell:** what I am looking at is the fact that you have two buildings and I am looking at the length of wall that's encroaching on the neighboring property that is going to be reduced even on the old map and it is three fold on the new map. The fact that they gave it to us tonight means that we have to deal with surveys but I think that what they submitted tonight makes a lot of sense.

**Peter Keating:** the land that you're recuperating from the destruction of the buildings what will that be used for?

**Jeff Anthony:** there will be a loading dock at the back of the restaurant and the waste container will be relocated to where the stairs are in the back of the restaurant so that it is screened and it is not visible like it is in the parking lot right now and then we're going to reconfigure some of the parking in the graveled area and the paved parking which is in the lower part of the property will be reconstructed.

**Peter Bauer:** what is the impervious change there?

**Jeff Anthony:** Peter like I said we just received the final survey on Monday and I am hoping that it will remain the same if not go down some.

**Peter Bauer:** and the stormwater? Do you have a stormwater mitigation plan for the front parking lot?

**Jeff Anthony:** yes, we're working on a Planning Board Application for site plan review and I believe that it is going to be a major stormwater which will be over 15,000 sq. ft. of total disturbance including building demolitions, parking reconfiguration and rebuilding the paved parking lot. I don't think we can stay under 15,000 sq. ft. and so it will meet the major stormwater standards.

**Tom Jenne:** which is good because you're so close.

**Jeff Anthony:** it will be over the 15,000 sq. ft. without question and then we'll have a landscape plan. We'll be going to an all green infrastructure for the stormwater management; we've already done test pits on the site, we received the new survey and so now we're able to proceed with site plan engineering to come up with a real site plan.

**Chairman Russell:** any other questions from the Board? (No response). We'll open up the public hearings; if anyone in the room would like to comment for or against please come up to the microphone and state your name. It appears that there is no one with comments and therefore we'll close the public hearing.

**A motion is introduced by Chairman Russell; seconded by Peter Bauer to close the public hearing.**

**All in favor, motion carried.**

**Chairman Russell:** I will make the statement that I have seen a lot of restaurants and commercial buildings in this area having been involved in construction for many years and having worked on many of these buildings over the years where additions were added and added and added; it didn't make any sense and the thing just sprawled out. I personally think that this is a very good plan to reduce large amounts of roof area, reduce a huge amount of encroaching on the neighboring properties and combining the operation into a more reasonable space; that's my comment. Anyone else have anything they want to bring up?

**Gary Moon:** I agree with you but I am just curious about the effect on the neighbors; it is a residential area on all the other sides and while those outbuildings that were previously there are obviously an encroaching problem I am wondering if any of the neighbors have been made aware of this; have we sent out notification letters?

Adele Behrmann and Keith Osborne both reply yes, the neighbors within 500 ft. of the property have been notified.

**Gary Moon:** I just wanted to make sure that the neighbors had an opportunity to respond because I would be concerned in that kind of a residential setting on the east side when you talk about a loading dock and other changes even though you'll have good stormwater management and various improvements there could be detriments to the new arrangements.

**Peter Keating:** presently when the tractor trailers come in they just drop off the load in the parking lot. I live a few feet from there and I helped the Lake George Baking Company with deliveries of breads and I know the scenario that the gentleman has described; in fact they did carry foods down in all kinds of weather from the prep building, down the stairs into the main kitchen area. I personally think that as a neighbor and a member on the Board this is a vast improvement for the area, the restaurant and the clientele; I think the benefits outweigh any consideration of negatives.

**Tom Jenne:** and I definitely agree with both of you and I just want to make sure that it gets in the record so that future applicants have the proper depiction of what you're doing.

**Keith Osborne:** and what I would add to that is that this Board doesn't require a survey; if you had an updated survey requirement that we would not be here.

**Tom Jenne:** yes but they get costly and at the way the economy is right now I wouldn't want to go that route but yes it is definitely a good project; I'd just like to see what I have in front of me and depicted accurately. I would like that on the record.

**Keith Osborne:** it is fair enough.

**A motion is introduced by Peter Keating; seconded by Tom Jenne to approve Area Variance AV8-2014 as submitted.**

**Peter Keating reads the criteria into the record.**

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

***No, there will be no undesirable change.***

- 2) Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance.

***No.***

- 3) Whether the requested area variance is substantial.

***No it is not.***

- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

***No it will not.***

- 5) Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

***No it was a fire that caused the problems.***

**Tom Jenne:** I think that the applicant should be applauded for trying to clean up a mess and to make something more conforming especially with the stormwater management; this is what everyone should be doing when they're trying to make something better than shouldn't be there in the first place.

Ayes: 5 Moon, Bauer, Jenne, Keating, Chairman Russell

Nays: 0

**All in favor, motion carried.**

**Peter Bauer:** is the restaurant going to lose the entire season or do they think they're going to be open at some point?

**Jeff Anthony:** they are going to lose the whole season.

- 3. Application for Area Variance AV4-2014 submitted by Charles and Rona Berrebbi with Meyer & Fuller PLLC as agents requesting an After-the-fact approval for expansion of a non-conforming structure and side setback relief. Further applicant is requesting relief for a second single family dwelling on a parcel that cannot be subdivided with variances; specific variance is for road frontage for property located at 38 Stone Schoolhouse Road. Tax Map No. is 238.15-1-50. Lot size is 2.39 acres. Zoning Classification is RCH-LS. Code reference is 175-63 & 175-13(B). SEQR is Type 2.**

**Chairman Russell:** this is a re-opening of an application we started last month.

**Matt Fuller, Esq.:** thank you Mr. Chairman my apology for the delay; there are some members of government that you cannot hang up on. At the last meeting we talked about the prior structure, where it was, setbacks and things like that and we did go out and commissioned a partial survey just of this part of the boundary and Kristin from (not clear) Land Surveying went out, shot the original lines the best she could and plotted from the original survey where the approximate location of the original structure was from that Dennis Dickinson map and then overlaid the existing wood structure which is the structure that's there now and plotted overhangs and things like that. So where in the past we called it conservatively 6 ½ ft. or so at the closest point, now it is 7 ½ from the structure which is the closest point and so it angles outward to the southwest from the boundary line where the structure is located. So we did go shoot that and it was not closer. I don't know if the Board has any other questions.

**Gary Moon:** there is a discrepancy I noticed on that survey with the RCHL5 (not audible due to background noise) I believe in the zoning code schedule for the rear setback is actually 50 ft. and not 20 ft.

**Keith Osborne:** I'll look at the rear but we're here for side setback relief but it is correct the rear setback should be 50 ft.

**Gary Moon:** I just wanted to point out the discrepancy and wanted to make sure that it is correct.

**Matt Fuller, Esq.:** the rear should be 50 ft.? Ok.

**Gary Moon:** do the dotted lines indicate the new structure's dimensions?

**Matt Fuller, Esq.:** the bold line is the footprint; in the past surveyors did not show overhangs but some municipalities and even some cities asked that they count as footprint and so now most surveyors will show overhangs. When she and I were out in the field I asked her to do that because I did not want to be accused of misrepresenting and so that's what the dotted line shows.

**Gary Moon:** on the survey it says existing wood frame structure; it doesn't represent the previous size.

**Matt Fuller, Esq.:** no, if you see the internal greyish line it says "approximate location of original structure;" when a structure is in the field now vs. proposed they have to say existing.

**Gary Moon:** that appears on this to be larger than the photographs we originally saw.

**Matt Fuller, Esq.:** no it is the same one; the structure has not changed since (pause).

**Gary Moon:** I thought it moved out on both sides equally from (interrupted).

**Tom Jenne:** that's exactly what I was going to ask. Let's ask Kevin that when he gets up because he is the builder.

**Matt Fuller, Esq.:** yes, if you look at the map that we've supplied there is one grey hatched area marked with a "d" with the lines pointing horizontally across the page which says approximate location of original structure and so that was the original structure on Dennis's original map; then the existing wood frame is the one existing now. I asked Kristin the same question, she can't show "proposed structure" because it is there and so when she goes in the field now the old structure is gone and so she referenced that as the original structure and then when she goes back out and there is a structure there now then it is "existing."

**Gary Moon:** the existing structure is the one that's there now.

**Matt Fuller, Esq.:** it is what is there now, yes.

**Gary Moon:** so it doesn't show the original one that they expanded; the dimensions.

**Matt Fuller, Esq.:** it is right inside there yes.

**Tom Jenne:** it does show it because it is one map on top of another and it is at least what we have to look at as a Board assuming that it is one map on top of another.

**Matt Fuller, Esq.:** yes we were asked to overlay both structures what was there from Dennis Dickinson's map and what is there sitting currently.

**Chairman Russell:** for your benefit Peter, the other question was that with two housing units they don't have adequate frontage but it is a pre-existing subdivision of land that was done years ago and so we came to the conclusion last week that that boat already left the dock so to speak and so we're pretty much concentrating on the fact that this building was pretty much constructed without any approvals and was expanded with the big question being "how far was it originally from the line" to help us make a decision.

**Keith Osborne:** it does not keep you from approving that frontage (not audible).

**Chairman Russell:** right, when we make our motion then we have to address both of those because it is in the application and it is part of the request.

**Matt Fuller, Esq.:** one of the things that we had talked about the last time I calculated out the difference which is 128 sq. ft. because if you look it was 12 ft. x 20 ft. because as some point certainly prior to my clients' ownership that the line of the building jogged a little bit and so there was some addition at some point even just by going from 12 ft. x 20 ft. which is the size in the current Town files and in the assessment records to where it is now the difference is 128 sq. ft.

**Tom Jenne:** if you're looking at the scale of the building the building that is there now is 16 ft. x 28 ft. and so why don't I address my original question to Kevin to you. There was a statement made that "you know you're dealing with a map that has been copied and dealt with for the last 20 years" and there isn't a whole lot of measurement room so a difference for 4, 6 or 10 inches it just makes sense to request a variance and then also we go on to there was a comment made about a floor joists being added on both sides which are 16" on center and I have a 10 ft. difference on one corner of the building. What happened if you look at the old subdivision map the back squares off and there is a square part that sits in the back; if you look at the small map with the subdivision which was squared off and widened by the length of a 2 ft. x 6 ft. which are floor joists instead of cutting them and then slapped the boards on the outside and then go from there. In my mind I understand that you have 16" addition on that side and you squared it off and then 16" addition on that side which was squared off but when I am looking at old and new it is not even close and so do you want to address that?

**Matt Fuller, Esq.:** I can have Kevin come up but I don't understand the question myself; they went from 12 to 16.

**Tom Jenne:** 16" centers is what you used for floor joist and this statement was made that a floor joist was put on one side of the building and another one was added on to the other side of the building which would 32" added to the building.

**Matt Fuller, Esq.:** that was in response to Keith's comment that the building expanded in both directions and it didn't; what the survey shows is that it was expanded inward and so to answer your question yes there was an expansion; there was an expansion from a 12 ft. to a 16 ft. wide structure admittedly but it did not expand toward the property line which is why we had to get the survey.

**Chairman Russell:** the building is bigger there is no doubt about it but the original statement saying that you added 16" to both sides may be true but it is not on the same footprint.

**Keith Osborne:** yes we know that but I would take exception that based on this survey it did expand towards the property line but not in the way that we thought it would.

**Matt Fuller, Esq.:** where?

**Keith Osborne:** up north.

**Tom Jenne:** this is Matt Fuller's statement from the last hearing that it was "widened by the length of a 2 x 6 which are floor joists instead of cutting them and left them slapped on the boards on the outside and go from there;" I am reading from the minutes; it wasn't Keith who said that which is why I said that I would address it to you.

**Matt Fuller, Esq.:** the suspicion was that it was expanded in both directions I remember that discussion specifically and that's why we got into the survey and agreed to shoot the lines because from the eye Keith thought that it did go on the whole thing instead the discussion was that "ok you may have stayed within that footprint but you expanded in both directions equally" basically laid it across the same purlins is what I thought.

**Keith Osborne:** that's the assumption.

**Matt Fuller, Esq.:** that's why we got the survey; from the eye if it looked that way to Keith that's fine.

**Chairman Russell:** I visited the site twice now and I have been out there but where is the line? It is impossible to tell, there is a stone wall there, is it on the side of the wall, on top of the wall, where is it? Now we have a document signed and stamped by a surveyor that gives us an exact dimension to the best that they can and so what we're looking at is that the building got a little bit longer probably by just a little bit because it looks as though it moved to the north east a little bit because the old building stuck out in the front a little further but it did expand a little further back and it did move a little closer to the east based on what that survey shows us with the overlay of the two buildings. So what we are coming down to is that we're looking for a variance for 7' 5" of setback in the rear and 10' of setback in the front where 20' is required; am I oversimplifying it?

**Keith Osborne:** yes, so the closest point is 7.5 ft. and they're looking for 12.5 ft. of relief.

**Chairman Russell:** that's right which gets better when we go towards the other end by 2 1/2 ft.

**Keith Osborne:** there are portions of this expansion that are outside of the setbacks although it doesn't matter because it is still an expansion of a non-confirming structure without a permit.

**Tom Jenne:** like I said I just want to address the different scenario that was brought in front of the Board last month. When Kevin gets up he can explain the 10" belly; the old structure probably had a 10" belly that was replaced other than band aiding it and then once again when I am thinking of floor joist that was widened by 16" on both sides and a 10" belly and I look at this 1/3 larger structure I am a little confused as to what actually happened.

**Gary Moon:** we were specifically asked by Matt as well to not consider that this had already been done; they are here requesting that they expand this structure which is existing and non-conforming to this size and I say we act on it.

**Tom Jenne:** to this size but how it got there was also part of the documentation and so when I see how it got there I can put it in my mind then I see what it actually looks like and the one doesn't match the other which is where I am having difficulty.

**Chairman Russell:** right, the original building was 16 ft. wide and the new building is 20 ft. wide; it was implied that 16" were added to either side which gives us a width 32 "when actually the width is 48" and that has been corrected by the survey stating that it wasn't added to both sides; it was added to one side because the building is not on the exact footprint where the existing building sat on. Any other questions at this point? Then we probably want to have Mr. Tucker come up and you can ask him some questions.

**Tom Jenne:** Kevin the question I have for you is on your statement that "while rehabilitating the building there were some rotten parts, you dug deeper, you had one good wall left out of everything (interrupted).

**Kevin Tucker:** which is the wall on the property line side that we're talking about.

**Tom Jenne:** and so if it wasn't feasible to just start repairing we had to replace the floor joist and then increase the purlins" and you said floor joist.

**Kevin Tucker:** where you're having an issue is that you're going 16" left and right when the floor joist actually run in the opposite direction and so they went from 12 ft. long boards to 16 ft. long boards and so it wasn't 16 ft. on center going left and right. The original left side line is almost exactly; we used the old purlins there and we beefed them up. The old structure had 4" purlins with a deck post on top of them; they are now I believe 18" around.

**Keith Osborne:** they're perpendicular to the side property.

**Kevin Tucker:** yes. The joist run to expansion; it goes 4 ft. off the side of the structure which is the direction the joist is running.

**Tom Jenne:** so you're telling me that the floor joist run perpendicular to the property line and so then in order to go from 12 to 16 you had to rip the whole building down.

**Kevin Tucker:** yes.

**Tom Jenne:** you didn't sister them on.

**Kevin Tucker:** no; we took down all but the left wall, we sister them on and then removed them as we moved through the building.

**Tom Jenne:** right and so basically it is a brand new building down to the floor joist.

**Chairman Russell:** actually it is a brand new building with brand new footings.

**Tom Jenne:** yes because he didn't sister on the 16s and 12s.

**Chairman Russell:** I think where you're headed Gary is probably the only way we're going to move forward here which is to say that we have an application before us, let's forget that it is there and let's look at the application before us and decide how we're going to move forward with this because we can talk in circles forever. I think you did a great job in resolving at least some of the issues; did it solve the variance side of it?

**Keith Osborne:** it certainly solidified what we're dealing with.

**Chairman Russell:** let's resolve the public hearing thing and then we can have some conversations but the only people left in the room are the owners. I will re-open the public hearing, is there anyone who would like to come up and make a comment on the application? Would you like to address anything as the owners at this point?

**Charles Berrebbi:** basically the building itself was going to come down no matter what because it got to the point where there were bats living in the chimney, mice everywhere and my kids were scared to death of living in there and so I asked if we could close up all the holes that they were coming in from and when he started ripping it up it was just getting worse and worse and then the pillars that hold the building were this big and sagging on the side; I am not going to put my kids in that no matter what. It was either ripping it down, replace it or rebuild on it; it is not going to happen this season but hopefully it will next season; that's it thank you.

**Chairman Russell:** thank you. Anyone else? (No response).

**A motion is introduced by Chairman Russell; seconded by Peter Keating to close the public hearing.**

**All in favor, motion carried.**

**Keith Osborne:** I would suggest to just poll at this point.

**Peter Keating:** I feel horrible for the owners and feel sorry the contractor but I think this could be a real problem with what we're facing and potentially setting a precedent for the future.

**Tom Jenne:** I am not worried about precedent I am worried about the fact that I don't like any part of it; a professional builder getting something done which isn't even close to what was there before.

**Peter Keating:** and knowing that a permit should have been needed built it anyway.

**Tom Jenne:** you got the poll from this side.

**Gary Moon:** I would have to say that in any case and if they wanted to build this structure I'd say sure if you move it back within the setbacks and so that's the remedy and if they say no we want these variances we say no.

**Chairman Russell:** yes, visiting the site, seeing the way it is located, the way it is reconfigured the fact that the building was gone was the perfect opportunity to get it away from the property line. In this case it doesn't mean that they can't have their cottage; they could apply and put it in the right spot.

**Keith Osborne:** regardless they would still be required to request frontage relief and still have to go to Site Plan Review.

**Peter Keating:** what's the amount of frontage relief they would have to ask for?

**Chairman Russell:** you probably were going to ask the same question I wanted to ask; can we break it apart?

**Keith Osborne:** it wouldn't matter. If you're going to deny the expansion it is mute.

**Matt Fuller, Esq.:** well no because I would ask to amend the application since you have the ability to do that in order for us to move it. It isn't cheap but yes we can have a crane come in and move that structure and put it at 20 ft.

**Keith Osborne:** you would have to come in with a new application or amend this one, that's fine.

**Tom Jenne:** I am not comfortable amending this application at this point.

**Peter Keating:** remember that there are two parts to it; you have the dwelling on there too.

**Chairman Russell:** right and that's what I am looking at. We have an issue with the variance because of the property line there not being enough frontage to use. As I stated earlier this was done before any of us sat here and for us to back up and put requirements on property owners that bought a piece of property that was subdivided before they bought it; so again I pose my question to our esteemed Planning and Zoning Officer, you would prefer that we don't separate these apart.

**Matt Fuller, Esq.:** if I may Mr. Chairman there is case law on this very point that where the Board has the ability to alleviate the hardship and you don't it is punitive. We had that discussion last month and frankly that's exactly what this is now. We are offering to alleviate that which you had a concern with, we will pick the building up and move it on a compliant location, we will get the amended map to Keith to do that; what you're doing is eliminating the summer because we need to come back, re-apply we are already close to the deadline and so we're back here in August; frankly it is punitive.

**Tom Jenne:** right but it is also not what's in front of us. Yes we could amend the application but right now we are working off of what is in front of us.

**Keith Osborne:** where do you plan to move it?

**Matt Fuller, Esq.:** right in that spot 20 ft. back.

**Gary Moon:** did you suggest moving it last month?

**Matt Fuller, Esq.:** we talked about it last month.

Both Gary Moon and Peter Keating do not recall talking about it at the last meeting.

**Matt Fuller, Esq.:** that was an option, an expensive option (interrupted).

**Gary Moon:** you mean you just stated it off hand but it doesn't mean that we discussed it.

**Matt Fuller, Esq.:** even tonight we can ask because we can put it anywhere on the property that's compliant and it would still need an area variance which is what I am saying to you. The intent is to make it compliant if that is the Board's directive but to deny and have us come back, again respectfully that is punitive.

**Tom Jenne:** since we are balance testing here, I am not leaning towards moving it to get a yes or no out of me.

**Gary Moon:** you asked us specifically last month to not be punitive and consider it as an application not considering that you already built which is just what we did. We considered it as though you brought this in front of us and said we want to expand in this fashion and would we approve it or deny it; and you're saying that that's punitive.

**Matt Fuller, Esq.:** no, you always have the ability to condition an application; in fact it is your duty as a Zoning Board to condition and so if you say that we're going to deny the request for relief of side setback but we grant, it is completely within your power.

Several Board members agree with the above statement.

**Keith Osborne:** so let's look at the facts here. This application is on the record for having three relief requests; one for side setbacks, one for expansion of a non-conforming structure and one for road frontage. It doesn't look like the Board is going to be accepting the expansion of a non-conforming structure, it doesn't look like the Board is going to accept the side setback relief and so that's done but I don't know where you're going with the frontage relief at this point. So I really don't know how to answer (interrupted).

**Chairman Russell:** and I don't want to speak for the whole Board but here is my thought. My thought is that it is three requests; they state that they're going to move the building to a point where it doesn't need two of the variances which brings us down to one variance and I don't see the benefit in going through an exercise to have them re-apply and come back.

**Keith Osborne:** from a procedural point of view that's fine.

**Peter Keating:** I feel the same way.

**Tom Jenne:** and I feel that moving a pre-existing non-conforming expanded structure and granting relief for road frontage in order to make the application pass, I have a sour taste in my mouth about that.

**Peter Bauer:** I wasn't here at the last meeting.

**Gary Moon:** I have to say that it is within our prevue I would have recommended a relief if they were to move it and I would think that the road frontage would be the least of the violations and the easiest thing to approve and none of it is punitive; it is working with the applicant and I think then that means that the criteria is regardless of the mistake that was made, coming to the Board saying that yes this structure was expanded and what can we do we can reply that we can do this but you have to do that. I think it is reasonable to request that you move it and I would be inclined to approve it.

**Chairman Russell:** Keith this has to go to Site Plan right?

**Keith Osborne:** absolutely.

**Chairman Russell:** so we can condition if we were to move forward and approve the portion of the request that deals with the road frontage, deny the other two hinged on the fact that they provide you something that shows where this is going to be relocated.

**Keith Osborne:** and that's my issue; you should be seeing where they are putting it.

**Tom Jenne:** so if it goes in the direction that it seems to be going now, would it be prudent to keep the public hearing open, give them 1 month instead of having them wait 8 months and say "listen, present it next month, the Board is leaning that way position where some of the other members might say yes." You cannot approve something when you don't know what the setbacks are going to be.

**Peter Keating:** you can approve it with the condition that it meets all the variance requests, all the setbacks excluding the road frontage or accepting it the way it is.

**Tom Jenne:** yes but you can't put a number on (interrupted).

**Chairman Russell:** I think that the answer is to re-open the public hearing, hold this off until next month, they'll come in with an adjusted application showing where it is going to be and we'll be ready to move forward at that point.

**Tom Jenne:** because they have a feeling what the Board is leaning towards and so it would be to the applicant's benefit to position it with road frontage being the only variance relief requested eliminating the other two problems at hand, re-submitting next month with the public hearing remaining open and I think that this is to everyone's best interest.

**Keith Osborne:** do you have a location map?

**Matt Fuller, Esq.:** it is going to be right there 20 ft. from the line.

**Keith Osborne:** there is a driveway there is it not?

**Chairman Russell:** no, I think there might have been a roadway or something at one point but not now.

**Keith Osborne:** the wastewater system has to be designed too.

**Matt Fuller, Esq.:** but not for the variance.

**Keith Osborne:** you are correct not for the variance but it all has to be taken into consideration for the placement.

**Chairman Russell:** there is one more thing that I need to make clear in my head and it is the same speech I gave last month. Unofficially polling the Board if they come in with this thing compliant are we saying that we would consider for the frontage?

**Peter Keating:** I am, yes.

**Tom Jenne:** no, I am not.

**Gary Moon:** I am inclined to.

**Chairman Russell:** because as I stated several times before I don't like to send people off on wild goose chases.

**Peter Keating:** Mr. Chairman you might to ask Karen Hanchett in case she has to vote on it.

**Karen Hanchett:** I am in agreement.

**A motion is introduced by Peter Keating; seconded by Gary Moon to reopen the public hearing.**

**All in favor, motion carried.**

**Chairman Russell:** we are requesting that they come back showing on the application that they need one variance based on the frontage and that the building meets the setbacks.

**Tom Jenne:** some kind of a drawing as to its placement.

**Keith Osborne:** it would be an addition to the survey which is pretty much what it would be and make sure to indicate the setbacks on the survey.

**Peter Keating:** do we have to have on the record that since the submission date has passed for this month that we will accept it?

**Keith Osborne:** actually the submittal date is the 15<sup>th</sup>.

**Peter Keating:** all right; if they have to go beyond the 15<sup>th</sup> should we put in there that we will still accept it so it doesn't go another month?

**Keith Osborne:** I think that's fine.

The remainder of the Board Members agree as well.

**Matt Fuller, Esq.:** we appreciate you giving us the time last month too.

**Keith Osborne:** so July 9<sup>th</sup> would be the time to get that going.

**Peter Keating:** we just ask if you could get that going as soon as possible.

**Chairman Russell:** I make a motion that we table this until next month; the applicant understands what we're looking for.

**Peter Keating seconds the motion.**

**All in favor, motion carried.**

### **OTHER BUSINESS**

**Chairman Russell:** Keith is there any business we need to discuss?

**Keith Osborne:** is everyone here up to date with their training?

The Board Members reply yes.

A motion is introduced by Chairman Russell; seconded by Peter Keating to adjourn the meeting at 7:45 p.m.

Respectfully Submitted,

Adele Behrmann  
Planning & Zoning Clerk

