

Minutes of the Town of Lake George Zoning Board of Appeals meeting held on July 11, 2018 at 6:00 p.m., at the Town Center, 20 Old Post Road, Lake George, New York.

**Members Present:** Gary Moon, Chairman of the Board  
Karen Hanchett, Vice Chairman  
Tom Jenne  
Robert Risman  
Mohammad Tariq, Alternate Member

**Absent:** Denise Paddock

**Also Present:** Dan Barusch, Adele Behrmann, Jon Lapper, Esq., Nick Mazzeo, Babe & Margaret Mitchell and others.

## Acceptance of the Minutes

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**A motion is introduced by Chairman Moon; seconded by Karen Hanchett to approve the minutes of the June 7, 2018 meeting as complete.**

**All in favor, motion carries.**

## PUBLIC HEARINGS

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Chairman Moon opens the meeting at 6:00 p.m. and switches the order of tonight's applications to review Nick Mazzeo's first.

**1. Extension of approved Area Variance AV4-2016 submitted by Nick Mazzeo with a proposal to replace an existing structure with a new 28 ft. x 60 ft. single family dwelling. Relief requested was for minimum area necessary for multiple single family dwellings on the same lot; for property located at 33 Birch Avenue. Tax Map No. is 264.10-1-57. Lot size is 0.42 acres. Zoning Classification is RCH. Code References are 175-16 & 175-13(B)(2). SEQRA is Type II.**

Nick Mazzeo is asking for a two year extension to the above approved area variance but Adele Behrmann informs the Board that at last night's meeting, the Planning Board approved a 3 year extension.

Tom Jenne asks if there have been any changes to the structure and plans since the last approval; Mr. Mazzeo replies that nothing has changed. He understands that the Planning Board made an exception when they granted a three extension but it really doesn't matter to him. He isn't certain whether he can complete the project in two years which is mainly attributed to finances.

After a brief discussion among the Members, they all agree to grant a 3 year extension in order to coordinate with the Planning Board.

Chairman Moon opens the meeting to the public with no response.

**A motion is introduced by Chairman Moon; seconded by Karen Hanchett to close the public hearing.**

**All in favor, motion carries.**

**A motion is introduced by Chairman Moon; seconded by Tom Jenne to approve a three year extension to Area Variance AV4-2016.**

**All in favor, motion carries.**

**2. Application for Area Variance AV7-2018 submitted by Dennis Dickinson with Jon Lapper, Esq. as agent, with a proposal to replace an existing cottage with a new, two story, 864 sq. ft. single family dwelling on the existing foundation as well as adding a 30 ft. x 50 ft. storage building to the northern part of the property. Relief requested is for expansion of a pre-existing, non-conforming structure; for property located at NYS Route 9. Tax Map No. is 238.17-1-8. Lot size is 1.62 acres. Zoning Classification is RCM-1. Code References are 17516, 175-63, 175-64 & 175-34. SEQRA is Type II.**

Chairman Moon reads the application into the record. Tom Jenne asks for clarifications on the application's site development data page and after a discussion with Dan Barusch, it is agreed to add 2,950 sq. ft. in line "G" under the "Proposed Addition sq. ft." Additionally, Tom Jenne asks that an accurate, exact measurement of the setback to the stream be shown rather than +/- . Jon Lapper informs him that it is difficult to come with an exact number since weather conditions affect the stream bank. Secondly, if any flooding would occur it would be away from the house which is why it was built in this location. After a brief discussion between Board Members, Tom Jenne asks Jon Lapper to determine a more accurate measurement; an agreement is reached to indicate "8 ft. to 11 ft." for the shoreline (stream) existing setback.

Chairman Moon voices his concern with the proximity of the foundation to the stream in the event of a flood; Jon Lapper replies that historically no flood has occurred in that location but if it were to happen, the water would go to the rear of the site and not the front since it is higher in the back. The expansion is a modest expansion of a very modest cottage that is presently in disrepair. The increase in footprint is to make the cottage a little more livable with the two bedrooms located on the second floor but not closer to the stream than it currently is. The 30 ft. x 50 ft. Morton building serves as storage since the cottage has none.

Dan Barusch informs the Board that this application is a little different than the one from two years ago. Two of the concerns that came up in the past as well as last night at the Planning Board meeting were the use on this site which was challenged as residential but ultimately determined as such by the Assessor, Lori Barber. Secondly, questions were raised on the wetlands and the project being APA jurisdictional. Mary Odell, an APA wetlands biologist, visited the site and delineated the wetlands; some are near the cottage, some are closer to the north side by the stream. Today, approximately 2 hours ago, a response was received by the APA deeming this project jurisdictional. Procedurally, the Planning and Zoning Boards are still involved in the project, however Dan suggests tabling the application to allow the applicant and other parties involved to decide the next course of action.

Bob Risman comments that he would want to move to issue an approval or denial and then let Mr. Lapper follow up with the APA. Jon Lapper replies that the APA ultimately will make a determination however he doesn't feel that it is inappropriate for both Boards to make a determination on the project knowing that ultimately the APA may be issuing the permit.

**A motion is introduced by Chairman Moon; seconded by Karen Hanchett to accept the amended application.**

**All in favor, motion carries.**

Jon Lapper adds that in terms of the criteria of the benefit to the applicant vs. the burden on the neighborhood, he argues that the increase in size is modest and that it would be benefit and an improvement to the neighborhood with a new approved septic system in an appropriate location. As for the drilled well, it will be located on the south side of the property away from the septic.

Tom Jenne comments that his concern is the environmental impact this project will have on the wetlands since, as indicated on the Warren County GIS by DEC, 62% of the site is located in wetlands. In addition, he is concerned with the disruption and impact this project will have on a major stream that runs directly into Lake George. He continues by stating that Mr. Dickinson knew what he was buying when he did. Jon Lapper responds that the stormwater generated by the impervious surface, which is only 3,500 sq. ft., will be infiltrated by the stormwater facilities around the cottage and around the storage building therefore having no impact on English Brook. As for the possibility of any filtration going into the stream during excavation, the short term remediation is to have a SPDES permit which will shield the stream from any siltation. Once the construction is completed, it will be exactly as it is now since the cottage is not any closer to the stream and will have a stormwater mitigation facility.

Tom Jenne is concerned that in the event of flooding, the stormwater devices will not work since they would be underwater as well as all the amount of disturbance generated by this project to demolish a building and rebuilding on a bigger footprint. Dan Barusch informs the Board that had the applicant requested a demolition and rebuilding permit on the same footprint with no increase in volume, he would not have needed a variance and would have been able to do so. A discussion ensues

among the Board Members. Jon Lapper reiterates that there will be devices in place to mitigate any siltation entering the stream during construction as per DEC requirements.

Chairman Moon opens the meeting to the public with no response.

**A motion is introduced by Karen Hanchett; seconded by Bob Risman to close the public hearing.**

**All in favor, motion carries.**

**A motion is introduced by Tom Jenne to deny Area Variance AV7-2018 as per 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 won't because based on the fact that this parcel has no neighborhood per se with wetlands on the west, north and southwest; a main thoroughfare on the east and extreme elevations to the far-east, it wouldn't affect a neighborhood.***

- 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.

**Yes, the option would be to maintain what was originally purchased.**

- 3) Whether the requested area variance is substantial.

***Yes, the increase of non-permeable structures by 2,850 ft. is substantial for a parcel which is that close to a stream and wetlands.***

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

***Yes, I absolutely believe that the environmental conditions of the neighborhood and district are in jeopardy due to the additions of a well, septic, pump stations, taking down the existing non-conforming cottage and heavy equipment coming in and out to rebuild it.***

- 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, when purchased in 2013, Mr. Dickinson knew what he was purchasing and should have known that the property was encumbered by wetlands as described by the GIS mapping.***

**Chairman Moon seconds the motion.**

<b>Ayes:</b>	<b>2</b>	<b>Jenne, Chairman Moon</b>
<b>Nays:</b>	<b>3</b>	<b>Risman, Hanchett, Tariq</b>
<b>Abstain:</b>	<b>0</b>	

**Motion does not carry.**

Dan Barusch asks if any of the Members who voted no would like to make a motion to approve it.

**A motion is introduced by Robert Risman to approve Area Variance AV7-2018 as submitted as per 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, this house is comparable to existing houses the neighborhood supports. It would be a positive change with no impact to the neighborhood. Dan has supported that it has been residential since 1950; it's a mere expansion.**

- 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, the applicant stated that the foundation is in good repair, useable and non-confirming and anything else would require a variance.**

- 3) Whether the requested area variance is substantial.

**No, it's clearly not substantial. The proposed home will be larger than the existing cottage but overall it will be a mere 4% increase.**

- 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; the district supports residential homes; it is a residential properties neighborhood. We've discussed any environmental concerns including the stream which has mean highs and lows water levels but will not affect the project.**

- 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. The applicant purchased the property which is pre-exists zoning. Applicants often seek to modify up or down the properties and I don't see where it is self-created.**

He continues by stating that in his opinion, the project meets the rationale and doesn't see the need to impose any conditions.

**Karen Hanchett seconds the motion.**

<b>Ayes:</b>	<b>3</b>	<b>Risman, Hanchett, Tariq</b>
<b>Nays:</b>	<b>2</b>	<b>Jenne, Chairman Moon</b>
<b>Abstain:</b>	<b>0</b>	

**Motion carries.**

Dan Barusch reminds Jon Lapper that the Planning Board will need to see topography of the project, limits of disturbance calculations and wetlands delineation.

Dan Barusch informs the Board that he believes that the APA will be looking at the septic system. Tom Jenne voices his opinion that the pump station and the well are in the same area as the septic and should be reviewed by the APA as well. Dan Barusch reminds Tom Jenne that the well meets all of the setback and requirements as per NYS Dept. of Health Well Regulations. The disbursal field is just 100 ft. from the stream bank and barely meets both NYS DOH and the Town regulations. Karen Hanchett brings up a previously approved project which was built on the shoulder of the bank with the well setback of only 10 ft. from the same road the current project is on. Additionally, the Town has installed infiltrators as stormwater devices in the area by the proposed driveway.

Tom Jenne reiterates his belief that additions to pre-existing, non-conforming buildings of septic systems and pump stations in areas that arguably are on the boundaries of the outside perimeters of streams should not be allowed. In this case 8 ft. distance from the stream is very close. Dan Barusch assumes that the APA may propose a different type of septic design that either doesn't fall within 100 ft. of wetlands or possibly a tertiary system.

**A motion is introduced by Chairman Moon; seconded by Karen Hanchett to adjourn the meeting at 7:00 p.m.**

**All in favor, motion carries.**

Respectfully Submitted,

Adele Behrmann  
Planning & Zoning Clerk