

**TOWN OF BLOWING ROCK**

**BOARD OF ADJUSTMENT**

**MINUTES**

**AUGUST 24<sup>TH</sup>, 2023**

The Blowing Rock Board of Adjustment met on Thursday, August 24<sup>th</sup>, 2023 at 5:30 p.m. in Town Hall. Members present were Chairman E.B. Springs, Stephen Schiller, Jerry Starnes, Paul McGill and Brandon Walker. Staff members present were Interim Planning Director Brian Johnson and Support Specialist Taylor Miller.

Chairman Springs called the meeting to order at 5:30 p.m.

**APPROVAL OF MINUTES**

Chairman Springs asked if everyone received a copy of the October 27<sup>th</sup>, 2022, minutes. All members received a copy. There was one correction pointed out.

Chairman Springs asked for a motion to accept the minutes. *Motion made by Mr. Stephen Schiller, seconded by Mr. Jerry Starnes. All members in favor of the motion.*

Chairman Springs acknowledged that we are supposed to elect a Chairman and Vice Chairman at the first of each year. He noted this is our first meeting of the year so we will elect a Chairman and Vice Chairman in this meeting.

The board nominated E.B. Springs as Chairman again. *Mr. Paul McGill made a motion to elect E.B. Springs as the boards Chairman. Seconded by Mr. Jerry Starnes. All members in favor of the motion.*

The board nominated Mr. Stephen Schiller for Vice Chairman. *Mr. Jerry Starnes made a motion to elect Mr. Stephen Schiller as Vice Chairman. Seconded by Mr. E.B. Springs. All members in favor of the motion.*

Chairman E.B. Springs noted the training that was done for the board back in the spring from the UNC School of Government. He said it was helpful and hoped they all learned a few things.

Chairman Springs advised that the North Carolina General Assembly overhauled the Land Use statutes. It was Section 160A, now they call it 160D. They made some changes that will affect the Board of Adjustment. That change states that at the conclusion of a hearing, the written decision from the Chairman that goes to the clerk must be approved by the board.

To fix that, Chairman Springs put together a resolution that states: "At the conclusion of a quasi-judicial hearing held before the Town of Blowing Rock Board of Adjustment where the Board has taken evidence

and applied the law to the facts and made its decision, the Board's decision shall be reduced to writing. A copy of the written decision shall be distributed individually to all Board members who participated in the hearing and decision, and the written copy may be delivered by paper copy or electronic mail. The participating members shall communicate individually to the Board Chairman if they approve of the accuracy and correctness of the written decision, and if all participating members communicate that they approve of the written decision, the Chairman shall sign the written decision and deliver the decision to the Clerk of the Board of Adjustment for filing."

*Chairman Springs made a motion to adopt the resolution. Seconded by Mr. Stephen Schiller. All members in favor of the motion.*

Chairman Springs signed the resolution and gave it to Support Specialist Taylor Miller.

Chairman Springs talked about the Frazier case regarding illegal short-term renting in R-15. Mr. Frazier was cited for illegal short-term renting. Mr. Frazier appealed the citation to the Board of Adjustment contending he was grandfathered into being able to short-term rent, the board concluded that was illegal short-term renting. He appealed to the superior court, and they ruled in favor of Mr. Frazier and against the town saying that Mr. Frazier was grandfathered. The judge from Superior Court noted that the ordinance language regarding short-term rentals was vague, ambiguous and unconstitutional. The judge said the town had no enforceable restriction against the illegal short-term renting until the 2019 ordinance change. The town lost to the Court of Appeals. The Court of Appeals said the free use of property is favored in our state. When there is ambiguous language, the decision will be made for free use of property. Language in ordinances need to be carefully crafted and clear so there is no guessing.

*Chairman Springs made a motion to send over the information he discussed tonight to the chairman of the Planning Board for him to look at it. Seconded by Stephen Schiller. All members in favor of the motion.*

#### **1. Variance #2023 – 01 Joseph E. Sleiman Trust variance request for 143 Bass Lake Drive**

Chairman Springs asked if all staff members and applicants were okay with Planning and Zoning staff member, Taylor Miller, taking the minutes for the hearing. Everyone was okay with that.

Chairman Springs asked Mr. and Mrs. Sleiman if they wanted Mr. Parks to do the talking or if they wanted to. Mr. Sleiman said Mr. Parks would do most of the talking but that he would like to speak as well.

Chairman Springs stated that this hearing is a quasi-judicial hearing. It is conducted according to the rules and laws pertaining to quasi-judicial hearings. It will have all of the essential elements of a fair trial. Parties will have the opportunity to give evidence, cross examine witnesses, inspect documents and testimonies shall be under oath. The board findings will be based on substantial material and competent evidence.

Chairman Springs asked if any board members had any conflict of interest, business or relationship with any of the parties in this case. No one had any of those issues.

Chairman Springs asked if any board members had any ex parte conversation with anyone about this case outside of this hearing. No board members participated in any ex parte communication.

Chairman Springs asked if any board members had gone by the address in question to see the property. Mr. McGill and Mr. Walker advised he had not been by the property, all other members had been by the property.

Chairman Springs asked if there was anyone in the room or watching the hearing felt entitled to be a party to this case, meaning they have standing to come into this case to participate. Mr. Nathan Miller, an attorney present, stated he is representing Chetola, LLC which is a neighboring landowner. They have standing under 160D-1402 Subsection G-2 along with rule 24 and Blowing Rock Code Ordinance 16-6.1.3. The Town ordinance states that all parties with standing must be able to participate fully. Chairman Springs clarified that Mr. Miller's client has standing because if the hearing does not go their way, they could face special damages. Mr. Miller said yes. Their property is directly next to the property in question.

Chairman Springs stated that to be transparent, we need to let everyone know that Mr. Stephen Schiller lives in Chetola and is on the Board of Directors for the Chetola Woods Condos. Mr. Nathan Miller stated this property is in Chetola but not apart of Chetola Resort.

Chairman Springs asked Mr. Parks and the Sleiman's if they have any objections to Mr. Schiller participating in the hearing. No one objected.

Mr. Miller handed paper copies of his written motion to intervene to the board members, applicant, property owners and Taylor Miller.

Chairman Springs asked the Sleiman's and the applicant if they have had a chance to look over the motion. Chairman Springs asked if they had an objection to the interveners. Mr. Parks stated that they oppose the interveners.

Chairman Springs asked Mr. Miller to speak to the special damages his client would face.

Mr. Miller asked everyone to look at the plat provided showing where his clients property is located. It is located directly next to the Sleiman's property. There is a 12-foot setback on the property line that to two properties share. He noted that any structure that encroaches on the setback requirements, would encroach closer to the clients home.

Chairman Springs asked everyone going to testify needs to go under oath. Taylor Miller swore in all parties that would testify during the hearing.

Mr. Miller stated that Mr. Prescott Little is the principal of the Chetola, LLC that he is representing.

*Member Paul McGill made a motion to allow Chetola, LLC to intervene as a party with standing, seconded by Mr. Starnes. All members in favor. Vote was unanimous.*

Chairman Springs asked if the board members and applicants received a staff report. All board members and applicants did. Mr. Miller and his clients also received a staff report.

Mr. Brian Johnson began to pass out information regarding the staff report.

Chairman Springs noted that he did not ask Mr. Parks and Mr. and Mrs. Sleiman if they object to Chetola, LLC being a party with standing. He asked if they object. Mr. Parks said they think Chetola, LLC should be

apart of this case moving forward. Chairman Springs stated that it will be reflected in the minutes that the Board gave Chetola, LLC standing and Mr. Parks and the Sleiman's objected it.

Interim Director, Mr. Brian Johnson, presented the staff report. The applicant is Mr. Ryan Parks on behalf of Joseph and Paula Sleiman. They are requesting a 10-foot encroachment into the side setback on 12 feet from the property line and a 5 foot encroachment into the front street setback of 30 feet to construct a 14' x 10' closet addition. Mr. Johnson referenced the pictures attached to the staff report.

Mr. Miller wanted to let everyone know, for the sake of being transparent, he knows Mr. Walker on the Board and has represented him on real estate and just wanted everyone to know that they do know each other and have worked together before.

Chairman Springs asked if Mr. Sleiman objected to Mr. Walker working on this case.

Mr. Sleiman asked Mr. Walker if he could make a fair decision on the case. Mr. Walker assured Mr. Sleiman he could make a fair decision.

MR. Johnson resumed his staff report presentation.

Mr. Johnson stated that the addition of the closet will be built on top of an existing retaining wall.

Mr. Johnson then pointed out a discrepancy of measurements on the site plan. Mr. Sleiman submitted the information for the variance request and staff noticed that the measurements of the eaves on the front of the house were not taken into consideration. The difference in measurements is because the eaves were not accounted for. For full disclosure, Mr. Johnson said it came to the staffs attention about a week or so ago. They are requesting a 7-foot variance but in the background, 5 feet is what is indicated.

The retaining wall that this closet would be built on is already existing and in the setback. It is non-conforming, but they can keep it that way.

Mr. Miller asked if Mr. Johnson reviewed anything from the register of deeds that indicated a variance granted for the existing walkway and existing retaining wall? Mr. Johnson said no. Mr. Miller asked if he knew how long the Town of Blowing Rock has had the 12-foot setback rule? Mr. Johnson said he did not know the exact date.

Mr. Miller asked if the tax office would be incorrect in saying the house was built in 2003? Mr. Johnson said he did not know. Mr. Miller asked if the applicants are requesting a 7-foot variance from the road? Mr. Johnson said their property line has a 50 foot right-of-way and there is a 30 foot setback from the right-of-way. They originally requested 5 feet, but they need an additional 2 feet for the request in order to account for the eaves. Meaning they are requesting a total of 7 feet which would make the home 23 feet from the front property line.

Mr. Miller asked from the side property line, the request is 2.7 feet. Mr. Johnson said that as correct. Mr. Miller asked if the town took a position on this request, did they choose to oppose or encourage either way. Mr. Johnson said no position was taken. Mr. Miller said those were his only questions.

Mr. Schiller asked if the 30 setback is from the center of Bass Lake Drive. Mr. Johnson said it is from the property line.

Mr. Starnes asked if there are any rules in the ordinance that uses the centerline for a setback measurement. Mr. Johnson stated that if there is not a determinable right-of-way on a street, the centerline is used to measure the setback. The setback is determined on the zoning of the property. Most streets have 30-foot right-of-ways, some have 40- or 50-foot right-of-ways. Mr. Starnes asked if this is the first time someone has had an as-built survey of the property. Mr. Johnson said no, we request surveys of properties very often. Mr. Starnes asked if this is the first time the homeowners have heard of them not being in the compliance with the setback requirements before their current request.

Mr. Sleiman said there was a house there before and was much smaller and was added on to. They bought the home as it is right now. Whoever lived in it before them were the ones to add on and make the home non-compliant to the current setback requirements.

Chairman Springs asked if the house meets setback requirements as is. Mr. Johnson said there are parts that are well within the setbacks, but some parts are encroaching the setbacks already. Mr. Schiller pointed out that the house is already partially non-conforming on one side of the house.

Chairman Springs asked if anyone knows when the house was built. Mr. Sleiman said the new house was built in 2003. Mr. Prescott Little said the original house was built around 1996 from his memory.

Mr. Sleiman asked Mr. Little if he noticed if the retaining wall was in the setbacks when they built it in 2003? Mr. Little said he did not because they do not live there full-time, and it was built while they were gone.

Mr. Johnson stated that setbacks can change over time in the ordinance.

Chairman Springs asked if Mr. Little owned his property at the time of the construction of the first house. Mr. Little said they have owned the property since 1996.

Chairman Springs asked if anyone else had any more questions for Mr. Johnson. No one did.

Chairman Springs asked to make Mr. Johnson's staff report a part of the record.

Chairman Springs asked about the notices sent in reference to this hearing. He asked if we notified the adjacent property owners. Mr. Johnson said yes, we notified 11 property owners.

Chairman Springs asked if he was contacted by any of the property owners the notice was sent to. Mr. Johnson said we heard from two different people just inquiring about the variance.

Chairman Springs asked if Chetola, LLC received a letter. Mr. Little said they did.

Mrs. Sleiman said she heard from a few property owners as well to ask about the zoning signs.

Mr. Johnson said the zoning sign was up for 14 days.

The notice letters were sent to property owners within 150-feet from the property line of the property in question.

Chairman Springs asked if we ran any public notices in the newspaper. Mr. Johnson said yes, we ran it in the local newspaper.

Chairman Springs advised we could now hear from Mr. Parks and Mr. and Mrs. Sleiman.

Mr. Ryan Parks stated the purpose of this addition is to add a closet to one of the bedrooms on the main floor of the house. Mr. Parks said the house is very spread out and they have family come stay with them. They want to expand the closet so guests can stay on the main level and have adequate closet space.

Mr. Parks said the existing retaining wall is a load bearing wall that would be able to support the proposed closet. He said the roofline, the rock wall and the side of the house will all remain the same. The addition will blend into the existing house well. There will be a 6-inch overhang that will be on all 3 sides of the 3 walls being added for the closet. They want to maintain the current look of the house.

Mr. Parks said he is doing other work for the Sleiman's but that this is the main project they've talked about. They realized there was a setback issue after meeting with Brian Johnson. They said they wanted to use what was already existing for them to do this addition which is why they are using the retaining wall.

Mr. Miller asked how Mr. Parks is related to the Sleiman's. Mr. Parks said they met through another client. Mr. Miller asked if Mr. Parks was an attorney. Mr. Parks said he is not; he is a licensed General Contractor.

Mr. Miller asked if he was hired by the Sleiman's to do some work on their home. Mr. Parks said yes. Mr. Miller asked the name of Mr. Parks company. Mr. Parks said Peregrine Construction.

Mr. Miller asked how big the house is. Mr. Parks said he does not have that information. Mrs. Sleiman said around 6,000 square feet. Mr. Miller said that the tax office states the house is 6,302 square feet, is that right? Mr. Parks said yes. Mr. Miller asked if the house was two levels and if it had an elevator. Mr. Parks said yes to both. Mr. Miller asked how many bedrooms the house has. Mr. Parks said 4-bedroom and 4 bath. Mr. Miller asked if all the bedrooms have closets. Mr. Parks said yes. Mr. Miller asked if the current bedroom they are looking to add a closet to already has an existing closet that they are going to extend. Mr. Parks said yes. Mr. Miller asked how big the current closet is. Mr. Parks said it is 8 feet by 10 feet wide. Mr. Miller confirmed that the current closet is 80 square feet. Mr. Miller asked how much they would be adding to the current 80 square feet. Mr. Parks said they would be adding 120 square feet.

Mr. Miller asked if any other closets in the home are that big? Mr. Parks said he did not know. Mr. Miller asked how many bedrooms are on the main floor. Mr. Parks said one. Mr. Miller asked how many bedrooms were on the bottom floor. Mr. Parks said there are 4 on the lower level. Making the house 5 bedrooms.

Mr. Miller asked if the elevator is accessible throughout the home. Mr. Parks said yes.

Mr. Miller asked how big the retaining wall is. Mr. Parks said it is 12 feet at its highest point. Mr. Miller asked if he has seen an engineering for the wall when it was permitted. Mr. Parks said no. Mr. Miller asked if he planned to have any engineering done to see if the wall can hold what he is proposing to do. Mr. Parks said yes. Mr. Miller asked who he was planning to use. Mr. Parks said they have not found anyone yet because of the variance process.

Mr. Miller asked about the foliage that would block the view of the house to the Chetola, LLC property. He asked if all of the foliage he is talking about is solely on the Chetola, LLC property. Mr. Parks said yes,

except for the stuff that comes over onto the Sleiman's property. Mr. Miller said apart from the encroached area, there really is not a lot of foliage is there? Mr. Parks said not really.

Mr. Miller asked for the estimated cost of the project. Mr. Parks said around \$70,000. Mr. Miller said he had no further questions.

Chairman Springs asked Mr. Parks the height of the addition. Mr. Parks said approximately 16 feet.

Chairman Springs asked if the closet is built, is the distance from the right-of-way going to be that 25.6 feet? Mr. Johnson said you will have to take into consideration the width of the eaves so it will be less than that. The total distance will end of being 23 feet and 9 inches to the right-of-way.

Chairman Springs asked what is existing behind the wall they plan on extending? Mr. Parks said it is the current closet. Chairman Springs asked it would be possible to shift the proposed addition back to where it would be within the setbacks. Mr. Parks said that would impose of the dining room area. Mrs. Sleiman said she would also lose a bathroom upstairs.

Mr. Schiller noted that there is a portion of the proposed area that could be within the setback requirements. He referenced one of the site plan photos and said there was a small triangular area that would be allowed to be built and would not need a variance. He said he didn't know how big it would be but there is a portion that would be allowed. Mr. Schiller asked Mr. Parks if they had considered that.

Mr. Parks said he had not but that if coming off of a house in a triangular fashion and created useful space that they would maybe only gain about 4 feet out and 8 feet in width.

Mr. Sleiman thanked everyone for taking the time to review their case. He said they've been apart of the Chetola area for 18 years. They all love and care about their grandmother. She is 88 years old and cannot go downstairs. There are other steps she would have to navigate, and she has a walker.

Chairman Springs stopped Mr. Sleiman and said he apologized but we cannot grant a variance for a personal reason. Chairman Springs said there was specific example that stated bringing an elderly parent to live with you is a change of personal circumstance, not a condition peculiar to the property. So Mr. Sleiman will have to speak to the issues with the real estate, not a personal problem.

Mr. Sleiman asked the board to look at the case from the position of a citizen board and they would respect whatever decision is made.

Mr. Miller asked for Mr. Sleiman to confirm the size of his lot being 150 feet by 14 feet. Mr. Sleiman said yes.

Mr. Miller asked about the cement walkway on the property and if Mr. and Mrs. Sleiman built that walkway. Mr. Sleiman said no, we had it fixed but we did not build it. The steps were cracking and it needed to be repaired.

Mr. Miller asked how you fix that. Mr. Sleiman said they just replaced what was there, they did not add anything on. Mr. Miller said he was trying to figure out if they replaced the slates on top or if they poured new concrete. Mr. Sleiman said he wasn't sure, it was 14-15 years ago. Mr. Miller asked if Mr. Sleiman did the work himself or if he hired someone. Mr. Sleiman said he hired someone. Mr. Miller asked if permits were pulled. Mr. Sleiman said he did not know.

Mr. Miller asked Mr. Sleiman what his unnecessary hardship is that will result from the strict application of the regulations. Mr. Sleiman said it's not large enough. Mr. Miller asked not large enough for what? Mr. Sleiman said it's not large enough for his mother's wheelchair and it's the only closet upstairs that she could use.

Mr. Miller asked how big the bedroom is. Mr. Parks said that his best guess would be 12 feet by 18 feet. Mr. Miller confirmed that would be 216 square feet.

Mr. Miller asked if there was anything peculiar about the property that would necessitate a variance such as size, location or topography. Mr. Parks said the fact that the house was already fronting the line of it being in the setback along those edges.

Mr. Miller asked if being close to the setback is common for that neighborhood. Mr. Sleiman said he didn't know.

Chairman Springs asked for Mr. Johnson to scroll through the photos of the property.

Mrs. Sleiman pointed out that they have no view of their neighbor's house and the neighbors have no view of their house.

Mr. Johnson asked Mr. Sleiman if there are any other options for a closet on the first floor. Mr. Sleiman said there is the very difficult option of building it off the back of the house and said he would not be structurally comfortable with it.

Mr. Johnson advised the board there is a letter from the property owners in the back of the packet to the board. Chairman Springs said he thinks everyone saw it, confirming it was about the property owners mother.

Mr. Miller asked about a picture we saw earlier. It's a picture of the concrete walkway and the white stake in the photo. He asked if the white stake indicates the boundary line. Mr. Parks said yes. Mr. Miller asked if the white line off of the stake follows the boundary line. Mr. Parks said yes. Mr. Miller asked if part of those stairs is already on the Chetola, LLC property? Mr. Parks said according to the survey, they are not, but in that photo, it appears that they are. Mr. Parks said he was the one who tied the string but the surveyor put the white stakes in.

Chairman Springs called for a 10-minute break.

Mr. Miller asked for Mr. Prescott Little to take the stand.

Mr. Miller asked if Mr. Little owns property in Blowing Rock. Mr. Little advised he did at 609 Bass Lake Drive. Mr. Miller asked how long he's owned the property. Mr. Little said he bought the lot in 1996 and finished building 1997.

Mr. Miller had Mr. Little point out his property on the tax map.

Mr. Little said the house before the Sleiman's was a little one-story house on an angle on the lot and the property went uphill. Approximately 2400 square feet. Mr. Little also said that the Sleiman's have been great neighbors. He doesn't know them very well but they have no problems.



Mr. Miller asked about the original house and if when it was torn down, if it was built back to the same footprint. Mr. Sleiman said no. When it was torn down, I was built back as a 2 story house. This happened in 2003.

Mr. Miller asked about the stone walkway and how close it is to Mr. Little's property. Mr. Little said in some places it's basically on his property. Some places are further but some spots are right on the line and over.

Mr. Miller asked about an increased footprint on the Sleiman's property and what it means for the vegetation on Mr. Little's property. Mr. Little said he planted hemlocks a long time ago and the retaining wall that was built on the Sleiman's property block sun on the bottom half of the hemlocks and nothing can grow. If you add more structure on top of the retaining wall, it will block the sunlight to his hemlocks even more.

Mr. Parks asked Mr. Little how tall the hemlocks are. Mr. Little said probably 30-feet. Mr. Parks asked if he could see Sleiman's house through the hemlocks. Mr. Little said it can depending on where you're looking.

Chairman Springs asked Mr. Little about the construction of the retaining wall in 2003 and how close it was put to the property and why he didn't complain then.

Mr. Little said he spoke to the city and was told if you left two walls on the old property, you could basically construct whatever you wanted. He said he never received a zoning letter or a public notice about the construction and they were gone at the time. By the time they saw it, it was basically already done. He acknowledged he may not have had all the right information at the time, so he didn't do more about it.

Mr. Parks asked if Mr. Little was the main owner of the Chetola, LLC and what the purpose of the LLC is. Mr. Little said they rent the house some, but the main purpose is for the taxes that they give to their children. Mr. Parks asked how often the house is rented. Mr. Little said probably 150 days a year. He said it's rented on the weekends and during the summer.

Chairman Springs asked if Mr. Little owned the house since 1997. Mr. Little said yes but it wasn't always in the Chetola, LLC.

Mr. Miller stated this is obviously a variance. It is a variance of the street setback and the side property line. We have setbacks so we can maintain nice residential settings. This home is already in violation, and they are now asking to be more in violation. He said he certainly understands the need for more space, but they have other options to provide more space. He said variances are not favored by law which is why it takes 4 out of 5 board members to approve a variance. You must prove four different things to get approval for a variance and he does not believe those four things were proven. Mr. Miller respectfully asked for the board to deny this variance request.

Chairman Springs asked if Mr. Parks or the Sleiman's if they want to make a closing argument for their case. Mr. Sleiman stated he is thankful for the opportunity to present. He said he knows the board must make tough decisions all the time. He said has no issues with the neighbor. He said they didn't know they had a setback issue initially and just wanted to try to go about this the right way.

Chairman Springs said he will leave the evidentiary status open while going through the facts.

During the findings of fact, Chairman Springs questioned Mr. Johnson about 2003 and the requirements for a street setback was. Mr. Johnson said he did not know.

Mr. Miller pointed out that the evidentiary hearing has not been closed yet and Mr. Rothrock joined the meeting. Mr. Miller noted that Mr. Rothrock might know the answer.

Taylor Miller swore in Mr. Rothrock so he could speak.

Chairman Springs stated they were talking about a house built in 2003 and whether the side setback in 2003 was 12-feet. Mr. Rothrock said it was 12-feet at that time. He also asked if the setback requirement from the street was 30-feet in 2003. Mr. Rothrock said no, it was 40-feet in 2003.

Mr. Sleiman asked Mr. Rothrock how the house was able to be built with the violations of the setbacks. Mr. Rothrock advised there were different rules for an enlargement of a non-conforming situation back then. At the time, expansion of a non-conformity allowed you to expand down the line of what already existed. If you were 5 feet off of the property line, you could continue the expansion for the rest of the property off the 5-foot property line until you ran into another setback. That rule changed in 2010. You were not allowed any expansion of a non-conforming violation. For example, if you had a one-story home that violated a setback, you could add a second story onto that home. Or if you had a deck that violated a setback, you could not add a roof over it because you would be expanding a non-conformity.

Chairman Springs asked Mr. Rothrock if it was possible in 2003 that the home was in compliance with the zoning regulations at the time. Mr. Rothrock said he was all but certain that it was.

Mr. Sleiman asked about the walkway that is on the property and if it's a problem. Mr. Rothrock said the walkway that is there would not require a permit.

Mr. Miller asked Mr. Rothrock how the zoning code defines a structure. Mr. Rothrock said he would have to look. Mr. Miller asked if concrete poured steps would not be considered a structure within a setback. Mr. Rothrock said it was not considered a structure in the setback and does not require a permit.

Mr. Miller said he understood it would not require a permit but if it's allowed in the setback. Mr. Rothrock said yes, all the way to the property line.

Chairman Springs thanked Mr. Rothrock for his time.

Mr. Miller asked Mr. Rothrock that if the setbacks were what they were back then, it would make this situation non-conforming now. Mr. Rothrock said yes.

Mr. Miller referenced Section 16-8.3 and asked if that section would forbid a variance of a non-conforming structure because it would be an expansion of it.

Mr. Rothrock said the section does prohibit the expansion of a non-conforming situation. He also stated there is a portion of variance findings that makes mention of non-conforming situations. Mr. Rothrock noted that every variance is granting expansion of a non-conforming situation.

Mr. Miller responded that every variance is a request to add to a non-conforming situation. He said then referenced section 16-8.3.1.

Mr. Rothrock said referencing that section is correct and that is why they are asking for the variance. You can't expand the non-conformity by right, which is why they have to request the variance.

Mr. Rothrock stated that you can expand a non-conforming situation if you got a variance because the ordinance does not allow the expansion without a variance.

Mr. Miller advised that he respectfully disagrees with Mr. Rothrock's interpretation of the code section.

Chairman Springs read the section Mr. Miller referenced and stated that the house is already in the setback. It was allowed at the time but is non-conforming now. He also stated that the addition would go further into the setback and put it even closer to the property line.

Chairman Springs stated we would be enlarging a non-conforming situation even more than what is already there. He stated that Section 16-8.3. will be listed as a fact.

*Chairman Springs made a motion to open the evidentiary hearing for Mr. Sleiman to ask a question. Seconded by Jerry Starnes. All members in favor.*

Mr. Sleiman asked about putting Mr. Rothrock's interpretation of the code section into the facts. Chairman Springs said that is Mr. Rothrock's opinion and they will focus of the code section.

*Chairman Springs made a motion to close the evidentiary hearing. Seconded by Mr. Stephen Schiller. All members in favor.*

#### **FINDINGS OF FACT**

1. The applicant is Ryan Parks, on behalf of Joseph E. Sleiman Trust.
2. The owners of the property in question are the Joseph E. Sleiman Trust.
3. The address of the property in question is 643 Bass Lake Drive, Blowing Rock, N.C. The Watauga County PIN number of the property in question is 2808-80-8751-000.
4. The property in question is zoned R-15.
5. The applicant is applying for a 10-foot variance in the 12-foot side setback requirement on the side of the property, and also wants a 7-foot variance in the 30-foot street setback requirement.
6. The Blowing Rock zoning code ordinance section(s) which is at issue here and which stands in the applicant's way is 16-12.4, which requires a setback of 12 feet from the side property line for construction in R-15 zoning district and a 30 feet street setback in R-15 zoning district.
7. There are other parties with standing to come into this case, that being Chetola LLC and Mr. Prescott Little Jr. and his wife Maria Little, whose address is 609 Bass Lake Drive, Blowing Rock, N.C. That address is next door to 643 Bass Lake Drive, the property which is the subject of the variance request.
8. The applicant did provide drawings or sketches and plans and pictures illustrating what the applicant wants to do.

9. The Town of Blowing Rock has provided and given all necessary legal notices of this case and this hearing.
10. There were proper notices given to all property owners with property abutting the parcel of land that is at issue here, and proper notice was given to all persons entitled to receive notice. Notices were sent to 11 property owners.
11. The applicant did receive a copy of the Zoning Enforcement Officer's staff report prior to the meeting.
12. There were other witnesses in the hearing besides applicant Ryan Parks, and the Zoning Enforcement Officer, Brian Johnson, currently working as Interim Planning Director.  
The other witnesses were:
  - (A) Mr. Joseph Sleiman, who testified as to his reasons for wanting the variance, and those reasons included a need for more room in the house and more closet space.
  - (B) Mr. Prescott Little Jr., the next-door neighbor, testified as to why he felt the variance should not be granted, and those reasons would include that he thinks the existing natural vegetation border between the properties would be more shaded and less effective as a border screen. He also thinks the desired new addition the applicant wants would negatively impact his property value and impair his ability to expand his house footprint toward 643 Bass Lake Drive because the two structures would be 14 feet apart from each other.
  - (C) Mr. Kevin Rothrock, the Interim Blowing Rock Town Manager and Blowing Rock's Planning Director for 22 years, testified that he believes the new house that was built on the 643 Bass Lake Drive property in 2003 and replaced the earlier house which was on the property, the new house was in compliance with all ordinances which existed at that time, 2003, including setback requirements. He testified that the location of the new house built in 2003 would be nonconforming as to setback requirements today, there have been ordinance changes since 2003.
  - (D) Attorney Nathan Miller summarized Chetola LLC and Mr. and Mrs. Little's position in this case, giving a closing argument.
  - (E) Mr. Joseph Sleiman summarized the variance applicant's need for a variance, giving a closing argument.
13. What the applicant is proposing would not impair emergency vehicles such as fire trucks and ambulances.
14. What the applicant is proposing would not create a fire hazard.
15. What the applicant is proposing would not block or impede visibility on any street or highway.
16. What the applicant is proposing would not be contrary to public health and/or safety.

17. Unique features of this property include:
  - (A) Most of the house is cited diagonally from the street front.
  - (B) There was at one time a smaller house situated on this property which was demolished around 2003. After that house was demolished, the present house was built and the reinforced cinderblock retaining wall was built.
18. Blowing Rock Town Code section 16-8.3 Extension or Enlargement of Nonconforming Situations. Says:

Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

  - (a) An increase in the total amount of space devoted to a nonconforming use; or
  - (b) An increase in nonconformity.
19. The existing retaining wall would be the foundation of the proposed new addition.

The Blowing Rock Board of Adjustment did adopt the above-listed facts by a unanimous vote.

#### **CONCLUSIONS OF LAW**

1. Based upon the evidence presented and the facts shown above, the Board of Adjustment DOES NOT FIND substantial, material and competent evidence exists to conclude that in this case unnecessary hardship would result from the strict application of the regulation.

The Board's vote on this factor was unanimous.

2. Based upon the evidence presented and the facts shown above, the Board of Adjustment DOES NOT FIND substantial, material, and competent evidence exists to conclude that in this case the hardship results from conditions that are peculiar to the property.

The Board's vote on this factor was three members voting "DOES NOT FIND," (Mr. Paul McGill, Mr. Stephen Schiller, and Mr. Brandon Walker), and two members voting "DOES FIND" (Mr. Jerry Starnes and Mr. E. B. Springs).

3. Based upon the evidence presented and the facts shown above, the Board of Adjustment FINDS substantial, material, and competent evidence exists to conclude that in this case the hardship did not result from actions taken by the applicant or the property owner.

The Board's vote on this factor was four members voting "FINDS" substantial, material and competent evidence exists to conclude that in this case the hardship did not result from actions

taken by the applicant or the property owner (Mr. Jerry Starnes, Mr. Stephen Schiller, Mr. E. B. Springs, Mr. Paul McGill), and one member voted "DOES NOT FIND" (Mr. Brandon Walker).

4. Based upon the evidence presented and the facts shown above, the Board of Adjustment DOES NOT FIND substantial, material, and competent evidence exists to conclude that in this case the requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

The Board finds that the requested variance would violate Blowing Rock Code section 16-8.3 by enlarging an existing nonconformity setback and increasing the extent of nonconformity.

The Board's vote on this factor was unanimous.

The Board of Adjustment did adopt the above-listed Conclusions of Law by unanimous vote.

The Board of Adjustment does NOT grant the requested variance as shown in the applicant's variance application package.

The Board's vote on this was unanimous.

This decision has been put into writing and has been approved by the participating members of the Blowing Rock Board of Adjustment.

This decision is effective upon filing with the Clerk.

The meeting was adjourned at 8:53 p.m.

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E.B. Springs, Chairman

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Taylor Miller

