

**APPLICATION FOR A VARIANCE**  
**BOARD OF ADJUSTMENT**  
**PO Box 268, Jackson, N.H. 03846**  
01/2010

**Do not write in space below:**

**Case No.** \_\_\_\_\_ **Date Filed** \_\_\_\_\_

**ZBA Signature** \_\_\_\_\_ **Public Hearing** \_\_\_\_\_

**Decision** \_\_\_\_\_

**Applicant Signature** Daren J. Levitt **Date** 1/5/11

**TAX LOT NUMBER:** Map R 12, Lot 100B

Name of applicant Daren and Melanie Levitt

Address P.O. Box 307, 25 Meserve Hill Road, Jackson, NH 03846

Owner Daren and Melanie Levitt

Location of property 155 Ridge Road  
(street, number, sub-division)

Acres 1.4 or Sq. Ft. \_\_\_\_\_

NOTE: This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate pages if the space provided is inadequate.

**APPEAL FROM AN ADMINISTRATIVE DECISION**

Relating to the interpretation and enforcement of the provisions of the Zoning Ordinance.

Decision of the enforcement officer to be reviewed:

On September 19, 2010, the Applicants obtained a Building Permit (see Exhibit 9 attached) which "certifies that Levitt, Daren J. has permission to create an accessory apartment at 25 Merserve Hill Road, a/k/a 155 Ridge Road (911 address for apartment)." The permit specifically notes, "All work must comply with state of NH Building Codes. Will need to have state approval for expanding to four bedroom septic plus comply with zoning ordinance in regards to adequate parking before certificate of occupancy will be issued." The decision with respect to whether the Appliants were allowed to retain the pre-existing accessory apartment on their property was made by the building inspector pursuant to §16.2.3 of the Zoning Ordinance on September 19, 2010. No appeal was taken from that decision by any abutter or by the Board of Selectmen within thirty days pursuant to Section 9.2 of the By-Laws of the Jackson Zoning Board of Adjustment and the provisions of RSA 676:5.

By a letter dated November 3, 2010 (See Exhibit 12 attached) , as required by RSA 495-A:32 the Applicants provided a copy of their septic plan to the Board of Selectmen for certification for compliance with all local government requirements as relate to water supply and sewage disposal prior to submission to NHDES. On November 4, 2010, the Board of Selectmen refused to accept that material as not being complete. (See Exhibit 13 attached).

By letter dated December 13, 2010 (See Exhibit 14 attached) ,with attached plan (Exhibit 15 attached) the Applicant resubmitted the septic plans reserving the right to challenge the jurisdiction of the Board of Selectmen to re-address any zoning compliance issue with respect to accessory apartment as approved by the Building Inspector on September 20, 2010.

On December 16, 2010, the Board of Selectmen refused to approve/certify the septic plans, with the denial based upon the requirements of Sections 2.3 and 4.1.2 of the Zoning Ordinance. (See Exhibits 16 (Minutes) and 17 (Denial Letter) attached.

It is the position of the Applicant, however, that neither the Selectmen and nor the ZBA had any jurisdiction with to review compliance with the requirements of Sections 2.3 and 4.1.2 of the Zoning Ordinance. The Board of Selectmen's/Town of Jackson RSA 485-A:32 certification is limited by statute to a review of compliance with all local government requirements relate to water supply and sewage disposal. It is the applicants position that the only part of the Zoning Ordinance that addresses water supply and sewage disposal are Section 4.1.4 and 4.1.7. Since the well location pre-existed Section 4.1.7, the only legitimate issue for review by the Board of Selectmen under RSA 485-A:32 was compliance with Section 4.1.4. Compliance with the requirements of Sections 2.3 and 4.1.4 are zoning issues for review under Section 16.1 and 16.2 of the Zoning Ordinance. In that the the Building Inspector issued a Building Permit for the Accessory Apartment pursuant to §16.2.3 of the Zoning Ordinance on September 19, 2010, and no appeal was taken from that decision by any abutter or by the Board of Selectmen within thirty days pursuant to Section 9.2 of the By-Laws of the Jackson Zoning Board of Adjustment and the provisions of RSA 676, neither the Board of Selectmen nor the ZBA had jurisdiction to revisit that issue.

Sections 2.3 and 4.1.2 of the Zoning Ordinance.

### 2.3 Non-Conforming Lots

A Non-Conforming Lot, as defined herein, which does not satisfy the requirements of Section 6 of the Zoning Ordinance, relative to Minimum Lot Size by Soil Type, but which has received approval from the State of New Hampshire (DES) for a sub-surface septic system and leach field, shall be limited to the construction of a Dwelling Unit not to exceed two (2) bedrooms, provided that, with the exception of Sections 4.3.1.3 and 4.3.2.4, all the other requirements of Section 4 of this Zoning Ordinance are met. (added 3/14/2006)

### 4.1.2 Minimum Lot Size

Determined by soil type. See Section 6.

16.1 Duty of Board of Selectmen It shall be the duty of the Board of Selectmen to enforce and administer the provisions of this Ordinance. **The Board of Selectmen or an appointed Building Inspector shall administer the Zoning Ordinance literally and shall not have the power to permit any use of land or buildings that are not in conformance with this Ordinance.** Variances and Special Exceptions must be approved by the Zoning Board of Adjustment.

16.2 Requirement of Building Permit (amended 3/10/1987, 3/13/2001). 16.2.1 A building permit shall be obtained before a building or structure is constructed, extended, removed or altered. This requirement also applies to swimming pools, mobile homes, modular homes and exterior signs. Alterations to an existing building or structure within the existing footprint that do not exceed \$10,000 in estimated value shall not require a permit.

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16.2.2 A building permit application shall be on a form provided by the Town, and shall furnish all requested information, and be accompanied by a permit fee, based on a fee schedule established by the Board of Selectmen.

16.2.3 The Board of Selectmen or Building Inspector shall act upon any application within 30 days after it has been received. In the event that 30 days is determined by the Board of Selectmen to be insufficient, the time period may be extended by the Board of Selectmen for an additional 30 days. **If a permit is denied, the reason for denial shall be clearly stated in writing. The Zoning Board of Adjustment may, upon appeal, special exception or variance, direct the issuance of a permit. (3/13/2001)**

Is any Use of or Structure on the subject property currently Non-Conforming? YES  NO

If yes, explain in detail:

When the Applicants acquired the subject property in 1995 it included both their current residence (three bedrooms) and the Carriage Building that included an apartment (with one bedroom) on the second floor. Since that date, the apartment has been rented to third persons, and, the Town of Jackson has assessed and been paid real estate taxes for that apartment. When the Carriage House was partially destroyed by fire, it was discovered by the Applicants and openly disclosed to the Town of Jackson that the previous septic approval by their predecessors in title was only for three bedrooms, and no specific building permit had been approved for the accessory apartment. Thus strictly speaking, leaving aside issues of fairness and/or municipal estoppel, the subject property with its accessory apartment does not comply with the minimum lot size requirements of the Town of Jackson, and, given that limitation, does not qualify for a Section 9, Accessory Apartment.

In addition, the well location preexisted the adoption of Section 4.1.7.

Does the subject property, including all existing or proposed buildings, signs, driveways, and septic systems meet Jackson Zoning Ordinance requirements and all applicable state regulations? YES  NO

If no, explain in detail:

It is difficult to answer this issue one way or the other. First, the septic system as designed does comply with NHDES regulations with the only exception being the Town of Jackson RSA 485-A:32 certification for compliance with all local government requirements as relate to water supply and sewage disposal. It is the applicants position that the only part of the Zoning Ordinance that addresses water supply and sewage disposal are Section 4.1.4 and 4.1.7. Since the well location pre-existed Section 4.1.7, the only legitimate issue for review by the Board of Selectmen under RSA 485-A:32 is compliance with Section 4.1.4.

Additionally, as acknowledged above, the lot as it presently exists has insufficient size under Sections 2.3 and Section 4.1.2 and Section 6 to comply with the Section 9.2 requirement for an accessory apartment. As noted above, however, it is the position of the Applicant, however, that neither the Selectmen and nor the ZBA had any jurisdiction with to review compliance with the requirements of Sections 2.3 and 4.1.2 of the Zoning Ordinance. The Board of Selectmen's/Town of Jackson RSA 485-A:32 certification is limited by statute to a review of compliance with all local government requirements relate to water supply and sewage disposal. It is the applicants position that the only part of the Zoning Ordinance that addresses water supply and sewage disposal are Section 4.1.4 and 4.1.7. Since the well location pre-existed Section 4.1.7, the only legitimate issue for review by the Board of Selectmen under RSA 485-A:32 was compliance with Section 4.1.4. Compliance with the requirements of Sections 2.3 and 4.1.4 are zoning issues for review under Section 16.1 and 16.2 of the Zoning Ordinance. In that the the Building Inspector issued a Building Permit for the Accessory Apartment pursuant to §16.2.3 of the Zoning Ordinance on September 19, 2010, and no appeal was taken from that decision by any abutter or by the Board of Selectmen within thirty days pursuant to Section 9.2 of the By-Laws of the Jackson Zoning Board of Adjustment and the provisions of RSA 676, neither the Board of Selectmen nor the ZBA had jurisdiction to revisit that issue.

**ADDITIONAL INFORMATION:** Summarize below any information from preliminary discussions with any state agency personnel in regard to the case. Attach copies of any correspondence from state agencies, or Jackson officials and boards pertaining to the property. See all Exhibits filed herewith in support of this Appeal, and the concurrent Applications for Equitable Waiver and Variance.

**NOTE:** This application is not acceptable unless all required statements have been made.

**Attach a copy of the enforcement officer decision and all pertinent documents and correspondence.**

Use additional attachments or separate sheet to provide answers to questions, if the space provided is inadequate.

**IMPORTANT NOTICE - Board of Adjustment By-Laws state that information from the applicant and/or his representatives must be provided to the Board no less than 7 calendar days prior to the date of the public hearing.**

**If you have questions about this application, please review the application instructions and checklist and the ZBA information found on [www.jacksonvillage.net](http://www.jacksonvillage.net) under Boards and Commissions. In addition, you may contact the Chairman of the Board of Adjustment, PO Box 268, Jackson, NH 03846**