

Town of Jackson Board of Adjustment

Notice of Decision

Case 2015-01: Application for a Variance to allow construction of a screened porch within the River Conservation District, with regard to lot on Candy Cane Lane, Map R-18 L-12.

Decided March 25, 2015, Decision Published April 2, 2015

Background

- 1) Charles and Lynne Stamey (the "Applicant") are the owner of a parcel shown as Map R-18, Lot 12 on Candy Cane Lane.
- 2) Said property has a boundary on the Southeast that is the Wildcat River. Nearly all of an existing house is within the boundaries of the River Conservation District, defined as the greater of 75 ft from the river bank and the 100 year floodplain for most substantial rivers in Jackson including the Wildcat River. The River Conservation District generally prohibits the construction of most structures within its boundaries.
- 3) Section 4.3.1.2 "Setbacks" also requires a 50 ft setback from any body of water. Substantially all of an existing deck on the Southeast side of the house adjacent to the Wildcat River is within the 50 ft setback from the Wildcat River.
- 4) A building permit application for screened porch to be constructed within the footprint of an existing deck on the Southeast side of the house was denied by the Town of Jackson on January 5, 2015 for lack of compliance with Section 5: River Conservation District and 4.3.1.2 Setbacks. Section 2.2.3 of the zoning ordinance specifies that existing non-conforming structures may not be made more non-conforming, including increasing the volume of the non-conforming structure by increasing it's height.
- 5) The Applicant submitted an application for a variance to permit the construction of a screened porch within the footprint of the existing deck for which a public hearing was held on February 4th. Said hearing was continued to February 25th and subsequently to March 25th.
- 6) The Applicant submitted an amended application prior to the March 25th meeting which proposed (a) the removal and abandonment of the existing 533 sq. ft deck on the Southeast side of the house and (b) the construction of a 15 ft x 15 ft (225 sq. ft.) screened porch on the Northeast side of the house. Said porch would extend 6 ft 6 in beyond the Southeastern facade of the house toward the Wildcat River, approximately 4 ft less than the existing deck.

Findings

- 1) The Board finds that the substantial (42%) reduction of the footprint of the nonconforming structure within the setback is in the public interest, consistent with the spirit of the zoning ordinance, and provides substantial justice. The reduction in the footprint of a nonconforming structure also meets an explicit goal of the master plan, as is the increase in the distance between the non-conforming structure and the Wildcat River. In doing so the Board acknowledges that the volume of nonconforming structure is increased despite the decrease in footprint. It is also noted that the proposed porch is expected to be less visible to travelers on the Mellon Road bridge.
- 2) The Board finds that the proposed modified screened porch will not diminish the value of surrounding properties.
- 3) The Board finds that literal enforcement of the zoning ordinance (to wit., the prohibition of construction within the various setbacks) would result in an unnecessary hardship, given the special condition that the Applicant is removing a larger (in footprint) nonconforming structure. Said special condition distinguishes this property from others in the area and the specific application of the ordinance in this case does not have a fair and substantial relationship between the purpose of the ordinance and its specific application to this

property.

Decision

Given the findings cited above, by a vote of 4-1, the Board of Adjustment grants the requested variance to Section 5 and Section 4.3.1.2 to permit the construction of a 15 ft x 15 ft. screened porch as specified in the attached plan, conditioned on the abandonment and demolition of the the existing nonconforming deck.

This decision may, for 30 days, be subject to a motion for a rehearing from any party of interest or the Selectmen. It should not be considered final until lapse of that period. Copies of this decision are provided to the Applicant, the Planning Board, Board of Selectmen, Town Clerk, Assessor, and Building Inspector.

Pursuant to 674:33-1-a, this variance shall be valid if exercised within 2 years of the date of final approval.

Frank Benesh, Chairman, Board of Adjustment

