

Jackson Board of Adjustment January 17, 2007 Minutes

Minutes Approved – February 21, 2007

Members in Attendance: Roger Chambers, Kurt Kramp, Ted Brown, Helene Matesky, Debra Crowther, Dot Wood, Lisa MacAllister and David Urey.
Shana Myers did not attend. Susan Way is our recording secretary. Mark Olejnik, applicant, also attended the meeting.

The meeting began at 7:00 PM. with Roger Chambers, Chairman of the Board of Adjustment presiding. There will be two cases discussed this evening. The voting members tonight are Ted Brown, Kurt Kramp, Roger Chambers, Helene Matesky and David Urey (alternate). Debra Crowther requested that alternate David Urey vote tonight as she was unable to attend the December 13, 2006 meeting discussing these cases. Chairman Chambers agreed with her request.

Agenda: Hearing for an Area Variance--2006-3—Olejnik--continued
Request for a Rehearing—2006-1-Digan--continued
Unfinished Business—Dec. 13 Minutes
Other Business

The continuation of the Olejnik Public Hearing will follow our standard procedure:

1. The applicant will present his case for the area variance. During this time only the Board may interrupt to ask questions.
2. Those in favor may speak.
3. Those opposed may speak.
4. Public comments
5. Rebuttals from both sides
6. Comments.

After this, the Public Hearing will be closed. The Board will try to vote and give the results on the same night but it depends on the time, whether we finish tonight. You may stay and listen while the Board deliberates to make a decision but there will be no further public input unless the Board has a question. If it gets late, the hearing may be adjourned to a later date.

HEARING FOR AN AREA VARIANCE—2006-3—OLEJNIK—continued

Roger Chambers, Chairman of the Board of Adjustment, made the following statement: This is a continuation of a hearing for an application for an Area Variance by Mark Olejnik, 19 Spring Street, Map R18-Lot 22. The Applicant is requesting a Variance regarding Setbacks in Section 4.3.1.2 of the Jackson Zoning Ordinance in order to build an addition to his home. This continuation was granted after receiving detailed drawings from Mr. Olejnik following the request made by the Board at the December 13, 2006 Public Hearing.

Mark Olejnik repeated some of his comments from the statement he gave at the December Public Hearing regarding building an addition. He stated that he needs more bedrooms for his two 18 - year old sons, and for other family members when they visit occasionally. He stated that the original house was built with a structural beam in a position that was intended to support the proposed addition. He also stated that his neighbors have not objected to this proposal and that he could not add the needed bedrooms in his 10 -car garage because it is too big and because of possible fumes. He feels there is no other space on his lot for the addition.

Kurt Kramp asked why Mr. Olejnik poured the footings without getting a permit first. He replied that he was unaware that the building permit needed to be renewed yearly. He felt that he could continue on the plan submitted 20 years ago. He dug out the area and poured the footings to get the job done before the inclement winter weather. In the previous hearing there was discussion and a question on the depth of the footings. Mr. Olejnik stated that these are 4-foot footings.

David Urey pointed out that we should be considering 2 variances. This structure would also be in violation of Section 2.2.3 regarding non-conforming structures. The Board discussed this issue with Mr. Olejnik and asked if he would like to amend his application to include this additional variance. He agreed. **David Urey made a motion to amend this application to include a variance to Section 2.2.3 as requested by the applicant. Roger Chambers seconded the motion and all voted favorably.**

Roger Chambers asked if Mr. Olejnik was able to discuss purchasing a portion of land from his neighbor, Mrs. Marguerite Walton. Mr. Olejnik said that neither he nor his lawyers could establish contact with the Walton family regarding a lot line adjustment.

Ted Brown feels that the best opportunity for relief would be in the garage area.

Helene Matesky questioned whether the definition of hardship under New Hampshire law can be determined by the nature of the structure as well as the land. The house is an A- frame and the position of the septic system and the drop offs on the land, make placement of an addition difficult.

David Urey responded that the land must be unique to justify hardship. He did not feel this is the case with this property. He also pointed out that granting the variances would be contrary to the second goal of the Master Plan. He read from the Master Plan that the goal is to decrease the non-conformity of existing land uses and structures.

Lisa MacAllister empathized with Mr. Olejnik's concern for the size of his home, but pointed out that this has existed for 18 years.

There being no further discussion Roger Chambers adjourned this part of the hearing for further deliberation at 7:50 PM.

Kurt Kramp sympathizes with what Mr. Olejnik is trying to do but feels he cannot go along with the variances. Having heard many variances over the years, he found that three-quarters of the

applicants have found another way to accomplish their goals when the variances were turned down. He thinks the value of the neighbor's land will go down. The lot is too small for this additional construction.

Ted Brown agrees with Kurt. The lot is too small and the ordinance regarding the setbacks was in place when the original structure was built. The house was built within the setbacks at that time.

Helene Matesky feels that we have tried to be helpful to the applicant but that the Board has specific rules that must be followed in order to grant variances. The Board has tried to be fair to the applicant but must also follow established procedures in order to enforce the Zoning Ordinance and be fair to all the people of Jackson.

Roger Chambers stated that there are two circumstances to be considered. If a variance was granted on the setback for the addition, it would be counter productive - the house would be going into the setback and also expanding the volume of a non-conforming structure. Roger Chambers and Helene Matesky have been to the lot and carefully reviewed the proposed addition in relationship to the setbacks. Roger feels it is not our prerogative to change the laws in the books and the Master Plan. He doesn't feel he could vote favorably.

Ted Brown stated that there are good reasons for establishing setbacks in the Zoning Ordinances.

Roger Chambers pointed out that even if Mr. Olejnik had a 20 foot piece as a land swap, the volume would still be increased in the original structure. The best alternative would be to put some kind of structure over the garage. We have tried over 2 meetings to bring something to the Board. Other circumstances can come into play.

There being no further discussion, Chairman Chambers asked the members to vote on both variance requests.

1. The value of the surrounding property will not be diminished.

All five members voted that the value of the surrounding property would be diminished.

2. The variance will not be contrary to public interest.

Kurt Kramp feels that the public interest is in the rural character of the area and extending construction into the setback is contrary.

Ted Brown agrees. The ordinance is in place and the proposed addition would be contrary. David Urey passed.

Helene Matesky agrees that it is not in the public interest.

Roger Chambers agrees.

3. Special conditions exist that literal enforcement results in unnecessary hardship.

Ted Brown is not convinced that there is unnecessary hardship.

Kurt Kramp feels there are other options.

Roger Chambers agrees with Kurt Kramp.

Helene Matesky agrees that there is no undue hardship.

David Urey feels that there are no special conditions on the land.

4. Substantial justice is done.

David Urey stated that substantial justice would be done by denying the variance. The owner has had substantial use of the property.

Ted Brown agrees with David.

Kurt Kramp agrees with both David and Ted.

Roger Chambers feels we would be throwing out the whole concept of the rules and regulations if we agreed to the variances.

Helene Matesky stated that substantial justice would not be done by granting the variances.

5. The variances are consistent with the spirit of the ordinance.

All 5 voting members agreed that the spirit of the ordinance is quite clear. Granting the variances would not be in the spirit of the ordinance.

6. The specific variance is the minimum variance necessary for a reasonable use of the land or structure.

Roger Chambers stated “No, there are other options for an addition elsewhere on the lot or over the garage.” All other voting members agreed that there were other options available to the applicant.

Helene Matesky made a motion that based on the Board’s findings, the variances to the two sections of the Zoning Ordinance be denied. Kurt Kramp seconded the motion and all voted favorably.

Kurt Kramp pointed out to Mr. Olejnik that he has 30 days to appeal this decision. He must have new information and not just repeat the same facts.

This portion of the hearing was adjourned at 8:20 p.m.

CONTINUATION OF DELIBERATION ON A REQUEST FOR A REHEARING Case2006-1— THOMAS AND MARY ANN DIGAN

Helene Matesky explained that we are now continuing deliberation on a request from the Digan’s attorney, Gregory Sullivan, for a rehearing of the Board’s October 18, 2006 decision.

In their request for a rehearing the Digans stated they are concerned that a proposed building on the property of Myles and Christine Crowe would be in a deeded right-of-way that they own on the Crowe property.

On December 13, 2006 the Board began its deliberation on this issue to establish whether a rehearing was warranted. The Board carefully reviewed the information submitted by the Digan’s attorney, in his November 17, 2006 letter regarding the deeded Right of Way. After some discussion, the deliberative session was continued until tonight’s session, January 17, 2007.

The Board again reviewed and discussed the documentation on file for this case. That documentation includes a letter Myles Crowe submitted on December 19, 2006, to the Jackson Board of Selectmen and a property drawing dated January 1, 2007. This information shows more details on the position of the proposed Crowe structure and the Digan ROW.

The Board also discussed the January 12, 2007 letter from the Selectmen that was received by Chairman Roger Chambers, stating that they have determined that the building and the septic system meet the setback requirements of the Town of Jackson and the proposed building is not in the Digans' Right of Way.

Kurt Kramp made a motion to deny a rehearing on the Digan request based on the additional information in the file and the letter of January 12, 2007, from the Selectmen. David Urey seconded the motion and all voted favorably.

UNFINISHED BUSINESS

David Urey moved to accept the minutes of the December 13, 2006 meeting as written. Kurt Kramp seconded this motion and all voted favorably.

OTHER BUSINESS:

Helene Matesky reported that there was a change in the RSA regarding the time limit for requests for a rehearing. She previously circulated a draft of changes to By-Laws to comply with this change. New language underlined below:

Time Limit for Rehearing Request – Within 30 days after any order or decision of the Board of Adjustment, the Board of Selectmen or any party to the action or any party directly affected thereby may apply for a rehearing. The 30- day time period shall be counted in calendar days beginning with the date following the date on which the Board of Adjustment voted on its action (RSA 677:2)

The Board voted to accept the By-Laws change as drafted.

Kurt Kramp feels that the By-Laws may need another change. He feels the phrase regarding a letter of denial from the Selectmen should be changed to state the Selectmen or their authorized representative, as some denials are made by the Building Inspector or the Town Engineer.

Helene said that she will review the language of the By-Laws and the applications for discussion next month. However, she felt that even though other representatives make recommendations to the Selectmen, it is ultimately the Selectmen who need to review their recommendations as they have responsibility for approving or denying building or septic system permits.

The next meeting will be February 21, 2007.

There being no further discussion, **David Urey made a motion to adjourn; Roger Chambers seconded the motion and all voted favorably.** Chairman Roger Chambers adjourned the meeting at 8:50 pm.

Susan G. Way
Recording Secretary
January 20, 2007

PUBLIC COMMENTS/CHANGES –Changes in writing should be sent to Roger Chambers, Chairman, Jackson Board of Adjustment, PO Box 268, Jackson, NH within 7 days, in order for consideration by the Board at the next meeting.

A complete text of the By-Laws and other Board of Adjustment (ZBA) information can be found on jacksonvillage.net