

Jackson Board of Adjustment

November 16, 2011

UNOFFICIAL UNTIL APPROVED

Draft November 20, 2011

Members in Attendance: Frank Benesh, Joan Aubrey, Brian Walker and Dave Mason. Alternates attending the meeting were Gino Funicella and Martha Benesh. Martha Tobin is the Recording Secretary. Members of the public in attendance were: Kevin Dickie, Patricia Dickie, Jeff Mallett, and ***Brian Byrne/Burn??**

The Chairman called the meeting to order at 7:00 p.m. and explained the procedure for tonight's meeting to the members of the public.

Dickie, Kevin & Patricia (Map V1, Lot 44) Request for variance

The Public Hearing was opened at 7:01 p.m.

Kevin Dickie noted they purchased a house with two bedrooms upstairs; they got a permit for demolition and took the upper floor off. They found that in order to provide proper support the roof rafters had to be raised. Kevin noted he is a tall man; the ceilings are seven feet high but it's still just a small two bedroom area. The floor area is currently 20' x 15' and this will increase to 20' x 20'. Chairman Benesh asked where that is shown on the plan; this plan still shows the existing roof line. It used to be 17'4" to the peak and that's increasing to 20' in order to accommodate the larger windows. Joan Aubrey pointed out the pictures show the upstairs isn't over the porch. This was affirmed; the floor space is going toward the street by two feet; Martha noted the depth is expanding and it was affirmed the floor space is going two feet toward the back as well; they are adding eighty square feet. Joan asked why they want to expand the floor two feet more towards the street and the fields and was informed the primary reason is for the insulating factor; they are going to 2 x 6 framing versus 2 x 4; a secondary reason is to accommodate larger windows. The Dickies are also expanding the deck and Chairman Benesh pointed out the deck isn't included on the application; they want to extend it to the driveway with a set of stairs. If they were sitting on the deck and there was a fire in the house, as it is now they would have to go out through the house; the deck expansion would create a second means of egress. Dave asked if the Dickies had looked at the RSA that addresses variances before they started their plans. Kevin noted they had received permission to reframe the second floor so they assumed it would be okay to make those changes that were needed. The section of the RSAs that apply to the ZBA explains what the Board is allowed to do and the criteria the Board has to follow; did the Dickies want to address those? Kevin noted the information regarding the criteria is confusing. Chairman Benesh noted that, generally, everyone has to follow the Zoning Ordinance and there are five criteria to meet; the one that is the most difficult one to meet is the question of hardship; he reiterated the basic premise is everybody has to follow the rules. The

increase in height is to address the issue of snow loading and that is a safety issue but by increasing the floor area they have increased the non-conformity of the building; they can get a variance to meet safety issues but those don't apply to the increase in floor space or area. The Dickies are allowed to go outside the parameters for structural reasons but otherwise they have to get a variance; it's because they are doing more than this that they are having to come to the ZBA. They need to discuss what is unique about their property from others in their neighborhood that makes them unduly burdened. Kevin noted his plan is to keep the expansion minimal and the result will be an enhancement to the village. It was noted the Board sees that what they are planning is an improvement but the Board has to provide a reason for any variance it grants.

Kevin reiterated that they got the building permit to tear the second floor off and they had to rebuild it to code. Joan noted building to code falls into 2.2; the room is increasing in size; they changed the framing to meet Code so the increase in height is okay; the issue is the two feet being added on two sides. It was noted they had to increase the floor space to accommodate for the change in wall thickness (from 2 x 4 to 2 x 6); it was noted that's only an extra two inches around the room, what's the expansion needed for that? Jeff didn't calculate that difference; Joan noted that accommodation is only a few inches and they got four feet; she is trying to understand why they need to go wider. It was explained the Dickies wanted to accommodate the larger windows; it was esthetics and necessity. Chairman Benesh noted if the Dickies want to frame with 2 x 6's rather than 2 x 4's that's their choice; they would still have a 20' x 16' room if the floor space is not expanded. The floor has already been gutted so the Board doesn't know if it was two bedrooms or what before; this can be looked up on the tax records.

Dave asked if it would be permissible for the Board to discuss the expansion of the deck tonight; Chairman Benesh noted the public announcement was general enough that would be allowable. The expansion of the deck to provide a second egress makes sense but Martha noted the deck is being expanded four feet beyond the house; what is the reason for that; if they just want to be able to walk off the deck down to the drive they are adding so much more than is needed; it's esthetic. Can this Board approve that? Dave asked if the Dickies didn't run the deck four feet beyond the house would they be able to get to the driveway and was informed they wouldn't be able to due to the eight foot drop. Martha would like to see pictures of the deck as it is now and was informed the Dickies don't have a plan only sections and elevations. The entire house is in the setback and what is there is only allowed because it has been there.

The Board members understand what is being proposed and Joan is prepared to write a decision. Chairman Benesh asked if there were any comments from the public and Brian Burn/byrne noted he didn't really have any comments but he can easily answer the question of how much they needed to expand the floor space to accommodate the increase in framing to 2 x 6's; it's four inches not four feet.

Chairman Benesh closed the Public Hearing at 7:28 p.m. Gino will be the voting alternate tonight.

To summarize what's going on, the Dickies are expanding the height and depth of the structure; it's not clear if there is an expansion of width. Chairman Benesh's sense is, given the language, they are allowed to expand up as necessary to accommodate the 2 x 10's so no variance is needed for that. It is clear that they are not only doing that but are also increasing the living space two feet towards the street and two feet towards the rear; this is the larger issue; they also want to increase the size of the deck. Will the Board grant a variance for these and are there any conditions to those if the Board approves this?

Dave noted he doesn't want to drag this out but it would be his preference to take his understanding of the situation and look at the RSA and see for himself how he thinks the arguments could be made, one way or other; he's not sure he can get to that in this meeting. Chairman Benesh noted the Board has been able to work through the criteria in one meeting in the past; it also hasn't in the past. He noted the way the Board approaches this is to ask the questions in the criteria and make a decision on the expansion of floor space on the second floor, the expansion of the deck (one or both), as well as any conditions, providing justifications for all decisions. The most difficult is making a decision about hardship, what makes this property so specially burdened that it requires the Board to grant a variance.

- 1) Granting of the variance would not be contrary to public interest – Martha noted if the Board agrees to grant this then the house next door is going to be able to do the same thing. Joan noted this house had a second floor on it before; this is a modest change; they are increasing the volume on the second floor but this Board has had that issue before it in other cases. Raising of the roof is needed to accommodate the larger joists, that is for safety and is a non-issue; the extension of the deck and allowing larger windows are also for safety. The Board members agree the criterion is met for both expansions.
- 2) The spirit of the Ordinance is preserved – Joan noted the house had a second floor before, nothing is changing; the spirit of the Ordinance is to eliminate undue expansion and this is not undue expansion. The Board members agree the criterion is met for both expansions.
- 3) Substantial justice is done; the loss to the individual is not outweighed by the gain to general public – Joan noted she doesn't see how the public benefits or not except esthetically. Martha noted they have the Fire Department as one neighbor and the town park as the other; these changes would make no difference to their neighbors. The Board agrees this criterion is met for both expansions.
- 4) The Value of neighboring properties is not diminished – The Board can't see how the value of surrounding properties would be diminished by the Dickies going out two feet in the front, two feet in the back on the second floor and expanding the deck. The Board agrees this criterion is met for both expansions.

- 5) Literal enforcement of the Ordinance would cause hardship – Joan noted to allow the Dickies to expand the deck is not treating them differently than anybody else; the need for a second egress is there, preventing that would be an undue hardship. They can't get out due to the steep drop off without the expansion. If the Board denies that expansions then it would unduly hurt them. The Board agrees the criterion has been met for expanding the deck but still has concerns about the expanded floor space. Chairman Benesh noted it could be argued that by enlarging the windows it will assist the egress; they don't meet the building code but they do improve the egress; it would be an undue hardship to have smaller windows because they couldn't get down from the second floor. Martha asked if the Board could say how the windows have to open; Chairman Benesh noted that is up to the owners to figure out. Larger windows are better than the smaller window; there is only one way down from the second floor. It was noted they are only looking for two feet on either end of the floor; they are not looking for another 100 square feet. Chairman Benesh is still troubled; he's not sure that an increase in floor area is necessary. The height at the front dormer is 7 feet; the lowest height in the second floor would be 6'8" so the entire living area is increased. Frank wonders if the restriction on the property is necessary to get the full effect of the Ordinance. Gino noted this is one of the most minor things the ZBA has reviewed. Joan noted there are special conditions because the whole house is within the setback; Chairman Benesh noted that is not a special condition, it makes the property unique; they are increasing the non-conformance of the property.

Dave would like to know how many members feel the variance should be allowed; Joan doesn't feel there are strong enough points for this last case but the proposal is reasonable.

Chairman Benesh noted he's prepared to try to make the vote and Joan noted she feels comfortable enough to write the decision up. The Board reviewed each of the five criteria and voted on each.

Not contrary to public interest – unanimous

Spirit of ordinance preserved – unanimous

Substantial justice is done – unanimous

Value of surrounding properties is not diminished – unanimously

Literal enforcement of the Ordinance would cause a hardship – unanimously

Dave would like to make a motion to approve the variance but it was noted there need to be some conditions set in the motion. The Board needs to stipulate how big the deck extension can be; Martha noted the footings are already there and it goes beyond "egress" and becomes a larger deck; four feet here, four feet there.... **Dave Mason, seconded by Gino Funicella, made a motion to grant the variance with the condition that the deck can go no deeper than it currently goes, can go only four feet beyond the house and cannot be enclosed. The motion passed unanimously (Benesh, Walker, Aubrey, Mason, Funicella).**

Chairman Benesh informed the Dickies they have their variance, Joan will write up the decision and it will be published; he will notify the Selectmen to grant the permit to do the work. Patricia asked if this meant construction could start again and was informed that it could.

Joan Aubrey, seconded by Martha Benesh, made a motion to adjourn at 7:58 p.m. The motion passed unanimously (Benesh, Walker, Aubrey, Mason, Funicella).

Respectfully submitted by:

Martha D. Tobin

Recording Secretary