

Jackson Board of Adjustment

December 18, 2013

UNOFFICIAL UNTIL APPROVED

Draft December 21, 2013

Members in Attendance: Frank Benesh, Joan Aubrey, Brian Walker, Dave Mason and Jerry Dougherty. The Alternate attending the meeting was David Matesky. Alternates absent were Martha Benesh and Gino Funicella. Hank Benesh is the Videographer, Martha D. Tobin is the Recording Secretary.

Chairman Frank Benesh called the meeting to order at 7:00 p.m.

Approve the Minutes of December 4, 2013 Dave Mason, seconded by Joan Aubrey, made a motion to approve the Minutes of December 4, 2013 as written. The motion passed unanimously (Benesh, Aubrey, Walker, Mason and Dougherty)

Public Hearing – Request for Equitable Waiver, Owner Post, Map V 05, Lot 32

Chairman Benesh opened the Public Hearing at 7:01 p.m.; the Board will hear from, and ask questions of, the applicants then the Board will deliberate and either come to a decision or continue deliberations to another meeting. The abutters have been noticed and all three cards have been returned. The Hearing was also noticed in the *Conway Daily Sun*.

Chairman Benesh reviewed the specific reasons for granting an equitable waiver.

When a lot or structure is discovered to be in violation of a physical layout or dimensional requirement, the zoning board of adjustment may grant a waiver only if each of the four findings as outlined in the statute are made: (a) lack of discovery; (b) good faith error in measurement or calculation; (c) no diminution in value of surrounding property; and (d) the cost of correcting the mistake outweighs any public benefit.

Brian Post and Kyra Salancy joined the Board. The encroachment into the setback was discovered when the as-built survey was received; the town engineer can't sign off without approval from the town. The home currently has an open septic system.

Chairman Benesh would like to know how it is that the building wasn't put where it was supposed to be. Brian noted they knew the building was within two-to-three feet of the setback. Due to the ledge this was the most ideal location. The lot was purchased in 2012 and they staked a rough area to clear the trees. The next major step would have been excavation and prepping the site. During each step of construction they were keeping track of the points laid out for the building; a mistake happened and they don't know how it happened. The eaves of the house are two-and-a-half feet into the setback.

Dave asked if Brian and Kyra did the measurements. Brian noted they are acting as the general contractor on this job. After excavation for the slab they did mark out the corners based on the septic benchmark; the people pouring the slab were responsible.

Joan asked how far into construction the house is; pictures were provided. They are up to the rough plumbing and electrical.

Dave asked if there were any letters. There was a letter sent directly to Brian from one of the abutters. That abutter is next door to the Post-Salancy property on the same side of the street and has no concerns.

Brian has nothing significant to add; he noted they are first-time home builders doing the best they can. They take it seriously that they are requesting a waiver; this is a small intrusion and doesn't affect the neighbors to a significant degree.

Jeannette Heidmann joined the Board; her home is further up the hill but she and her husband purchased the abutting lot to protect their view. The encroachment doesn't really affect them and they are not concerned about the eaves being two-and-a-half feet into the setback. Jeannette's concern is what might happen if they were to sell the property. She wondered what is in the deed for protection. Chairman Benesh noted that is the purpose of the equitable waiver; this would be made a conforming use if the waiver is granted. The information would be recorded in the property file; it doesn't have to be filed with the county but the owners are welcome to do so. It's not something the town typically does.

Chairman Benesh noted if the Board chooses not to approve the equitable waiver the owners could do a lot line adjustment or the Board could choose to have the Selectmen enforce the building code. Once a waiver is granted the owners must comply with all other requirements now and in the future. Granting the equitable waiver provides an exemption to the enforcement. The Selectmen have, in the past, had decks torn down and intrusions removed.

The Board had no further questions; Brian and Kyra returned to their seats; Jeannette left the meeting. Chairman Benesh asked the Board to go through the test in order to record a vote on each.

(a) lack of discovery The Board unanimously agrees the encroachment was not noticed until the home was substantially built.

(b) good faith error in measurement or calculation The Board unanimously agreed the encroachment was not the outcome of ignorance; Jerry noted Brian's own agent came forward with the discovery which clearly shows this was a good faith error.

(c) no diminution in value of surrounding property The Board unanimously agreed the encroachment doesn't cause a nuisance or lower the value of surrounding properties based on the input from abutters.

(d) the cost of correcting the mistake outweighs any public benefit The Board unanimously agreed that due to the investment and the cost of correction it would be inequitable to require the violation to be corrected.

Dave Mason, seconded by Brian Walker, made a motion to grant the equitable waiver for Map V05, Lot 32. The motion passed unanimously (Benesh, Aubrey, Walker, Mason and Dougherty).

Chairman Benesh closed the Public Hearing at 7:17 p.m. He thanked the Board for coming in for a second meeting this month; this will help these folks get their septic completed.

Other Business Chairman Benesh noted the Board is required to hold a meeting in January to elect officers and review its bylaws, otherwise he is not aware of any applications.

Joan Aubrey, seconded by Dave Mason, made a motion to adjourn at 7:18 p.m. The motion passed unanimously (Benesh, Aubrey, Walker, Mason and Dougherty).

Respectfully submitted by:

Martha D. Tobin

Recording Secretary