

Jackson Board of Adjustment

March 20, 2013

UNOFFICIAL UNTIL APPROVED

Draft March 26, 2012

Members in Attendance: Frank Benesh, Gino Funicella, Dave Mason and Joan Aubrey. Alternates attending the meeting were Martha Benesh and David Matesky. Martha D. Tobin is the Recording Secretary.

Chairman Frank Benesh called the meeting to order at 7:00 p.m. at the Town Offices then adjourned to the Old Library Building. The meeting was reconvened at 7:07 p.m. As Martha Benesh was in attendance during the last discussion, she will be the voting member tonight.

Approve the Minutes of December 12, 2012 Chairman Benesh asked for corrections; the name of the road needs to be changed to North Hampshire Ridge Road. There were no further amendments or corrections. **Joan Aubrey, seconded by Dave Mason, made a motion to approve the Minutes of December 12, 2012 as amended. The minutes were approved 4-0-1 (Benesh, Aubrey, Mason and Benesh for, with Funicella abstaining).**

Case 2012-02: Robert Ruppel Variance concerning Map V07, Lot 123 Chairman Benesh noted the survey shows the proposed garage is entirely within the setback instead of the fifteen feet on the initial application. The Board was generally supportive of the variance during its previous discussion. Joan summarized the findings of fact. Chairman Benesh noted the survey shows the setback area is approximately sixty-six percent of the parcel; the survey shows the entire garage as proposed is within the setback; based on the pictures it's not clear if the roof of the garage would be over or below the grade of North Hampshire Ridge Road.

Regarding the variance not being contrary to the public interest, the Board had a lot of discussion and generally agreed it would not be changing the visual character of the neighborhood as it was previously understood; Chairman Benesh wondered if anyone had any further discussion. Dave noted the garage is going to be cut into the hillside so it would be down low; there will still be a twenty-seven foot wooded area alongside the garage; the purpose of the fifty-foot setback is to preserve the visual character of the neighborhood. The house almost sits on the setback so even if the garage was next to the house there's still twenty-five feet between the house and the road. Chairman Benesh noted that depends on the orientation; the original plan had a canted garage. Joan noted that while the garage is more into the setback, there is still a sizeable wooded area. Martha wants to make sure folks understand the setback from the road starts at the ROW not at the pavement. The Board can put conditions on an approval if granted and the

abutters the Board heard from were encouraging. Joan noted that as one goes up the road, the houses are right there, they are not all tucked away; so this would not be changing the character of the neighborhood.

Gino brought up Green Hill Road where Helen got shot down for being a foot and a half into the setback and wonders how that was different than this request. Chairman Benesh noted that Helen's case involves a street with a very well-defined setback for the houses and she was going to intrude on that; there was also an issue regarding the visual impact of the front of the house. This case won't be so visually problematic.

Joan noted this is a unique property due to the long frontage and because it is a corner lot that requires a fifty-foot setback. Martha disagreed, noting that both sides have twenty-five feet he can use; the set back is not a problem; Mr. Ruppel choses to have it set where he puts it; he has the room to put it elsewhere and that is bothersome. The gradients are no more down than up; he's either taking dirt out or putting it in.

David Matesky noted that is looking at the ZBA manual, criteria number 3 that calls for substantial justice to be done; he sees no gain to the general public if this is approved. Chairman Benesh noted the Board is just talking about the fifth criteria; literal enforcement would result in an unnecessary hardship; everyone agreed during previous discussion that criteria number one through four were met.

Joan noted Rob also has to respect the well-radius.

Martha wondered why the town bothers having setbacks if the Board is going to give him the ability to build one-hundred percent in the setback. Dave noted granting the variance won't disturb the character of the neighborhood, which is the reason the setback is in place.

Chairman Benesh wondered if the Board wants to limit how much into the setback the garage can be built so there is still a larger setback. David wondered what that would accomplish and Chairman Benesh noted this would provide for the garage to be set further back from the road; the Board can also stipulate that the garage can't be higher than a couple feet over North Hampshire Ridge; Dave noted the Board can make it a condition that the slope must remain wooded for screening.

David asked if relief can be granted to the property-owner without frustrating the purpose of the setback; Dave affirmed that would be the case if the purpose is to maintain the neighborhood's character. Chairman Benesh noted the purpose of the setback is also for density.

Joan noted that is a point of thought; the covenants at North Ridge has a fifty-foot setback and the Board can't supplant that.

Martha noted the Board can't tell them they can build on an easement as they don't own the land.

Chairman Benesh noted the Board is not saying they can build; this is just a variance from Jackson's Zoning Ordinance; they still have to meet all the requirements of the property, like maintaining the well-radius; the Board is not addressing any of the other constraints, codicils or covenants attached to the land. The Board should at least say they can't build into the ten-foot utility easement; that will be part of the conditions of any approval.

Joan would like to look at the restrictions and/or conditions the Board will be attaching to this; there needs to be some sort of condition of minimizing visual impact; also a height condition. Chairman Benesh thinks the Board should also set the amount of intrusion allowed into the setback by stating intrusion can be no more than "X" rather than approving building anywhere in the setback. The height of the garage above the road needs to be set; Rob noted there is no plan for a loft; the plan was a rough design; the actual pitch will be seven/twelve so it will be five feet lower in height. Joan asked if asking for a twenty-foot setback limit would limit Rob's ability to do what he wants to do; Rob noted it would; the garage would almost touch the house at that point; he would like to be able to build forty-feet into the setback which would put the garage fifteen feet away from the house. Dave asked why the garage needs to be fifteen feet from the house; Rob noted it doesn't have to be but he has a propane tank and a generator that he's working around.

Chairman Benesh noted that the consensus tonight seems to be this would be conditionally approved with the following conditions:

1. Rob cannot go into the seatback more than forty feet.
2. The garage ridge can't be more than two feet over the finished grade of North Hampshire Ridge Road.
3. There will be plantings of evergreens/conifers on the slope.
4. The garage will have a neutral roofing color.

Joan Aubrey, seconded by Martha Benesh, made a motion that the Board find that literal enforcement would result in an unnecessary hardship. The motion passed unanimously (Benesh, Aubrey, Mason, Funicella and Benesh).

Joan Aubrey, seconded by Martha Benesh, made a motion to grant the variance with the four conditions listed. The motion passed unanimously (Benesh, Aubrey, Mason, Funicella and Benesh).

Other business Chairman Benesh is in receipt of another variance application to be posted soon for a property at 6 Spring Street; this is a relatively small property at one-hundred-fifty-foot square; it's also on a corner so is very limited; the owner wants to build in the setback; the Board needs to understand the character of Spring Street. Joan

will not be able to be at the meeting if it's held in April; Chairman Benesh would prefer to have the full Board. This will have to be run by the applicant as the Board is supposed to act within thirty days but the owner isn't planning to build right way. If it is acceptable to the applicant; the Board will meet next on the third Wednesday in May at 7 p.m. at the Old Library Building; if it is not, the Board will meet on the third Wednesday in April.

Joan Aubrey, seconded by Dave Mason, made a motion to adjourn at 7:51 p.m. The motion passed unanimously (Benesh, Aubrey, Mason, Funicella and Benesh).

Respectfully submitted by:

Martha D. Tobin

Recording Secretary