

## Jackson Board of Adjustment

May 21, 2014

### UNOFFICIAL UNTIL APPROVED

Draft May 28, 2014

**Members in Attendance:** Frank Benesh, Jerry Dougherty, David Matesky, Brian Walker and Dave Mason. Alternates attending the meeting were Martha Benesh and Huntley Allan. Martha D. Tobin is the Recording Secretary.

Chairman Frank Benesh called the meeting to order at 7:00 p.m. He'd like to correct an oversight from the last meeting. Roger Chambers passed away on April 20<sup>th</sup> and Chairman Benesh would like to recognize Roger's long service to the town and this Board.

**Approve the Minutes of April 30, 2014** Chairman Benesh has a correction; it's not a Jackson Zoning Ordinance that requires a building lot to have two hundred feet of frontage on a road; it's a state law. Martha Benesh would like to have Sonny Couture's attorney, Jack Crisp's last name added to the record. There were no further amendments or corrections. **Dave Mason, seconded by Brian Walker, made a motion to approve the Minutes of April 30, 2014 as amended. The motion passed unanimously (Benesh, Dougherty, Mason, Matesky and Walker).**

**Public Hearing Couture – Continued** Chairman Benesh reconvened the Couture Public Hearing at 7:02 p.m. At the conclusion of the last meeting Chairman Benesh was going to get input from Fire Chief/Road Agent regarding any conditions or direction for the Board; there is nothing else he would require however he did forward an email with the newly approved driveway inspection form. With that being said, Chairman Benesh asked if there were any further comments or questions from the Board; there were none.

Chairman Benesh reviewed his draft decision from the Board's finding at their April 30<sup>th</sup> meeting. A filing of municipal liability must occur prior to issuance of a building permit. **David Matesky, seconded by Dave Mason, made a motion granting an exception to 674:41 for Sonny Couture, thus allowing the granting of a building permit even though the lot does not have direct access to a road. The motion passed unanimously (Benesh, Dougherty, Mason, Matesky and Walker).** Chairman Benesh reiterated that a municipal liability waiver has to be filed at the Registry of Deeds before the building permit will be issued; this decision is subject to appeal by an interested party or the Selectmen for thirty days so this should be considered conditional. Sonny wondered who would write the waiver; Chairman Benesh noted this is a standard form and Counselor Malia will generate the document to make sure the town is not held liable. The driveway will be built to town driveway standards.

Chairman Benesh closed the Public Hearing at 7:08 p.m.

**Public Hearing Armstrong** Chairman Benesh noted the Armstrongs (David and Becky) are requesting a variance to Jackson's Zoning Ordinance concerning setback from the street. Everybody from town is expected to comply however the Board can grant a variance when the applicant has met the five tests; the most significant of which is that the strict application of the Ordinance to the situation causes hardship due to the uniqueness of the lot; hardship refers to the nature of the situation.

Chairman Benesh opened the Public Hearing at 7:09 p.m. and reviewed the process for the Hearing. David Armstrong explained what they would like to do with their property. This is the old parsonage and the front porch has dropped; since access to the home is an issue, they'd like to build a porch that will be accessible; he's fallen and Becky's dad is eighty. The current porch is twenty-two feet from the road; the property doesn't allow for building a ramp so they'd like to build a farmers porch. The hardship is due to the way the house lies; they have no flat access to the house; the south side is by the road leading to the neighbor; another access has been walled off and the other access is through the woodshed and is a significant "climb" into the house. The plan would be for the porch to be the same style it is now. The addition would be eight by thirty eight feet; David reviewed his drawings with the Board. The existing roof is thirteen feet.

David noted they also have an issue with privacy; while they knew the place was on the seventeenth tee, if they can go around the corner with the porch they'll be afforded a bit more privacy. They have to do something to the porch to stabilize it and would like to be able to address the access and privacy with this variance. He also wanted the Board to understand the area where they are looking to add is almost flat so they can come off the parking lot into the house.

When asked what is unique about their property that makes the application of the fifty foot setback a hardship David noted the way the house sits is already non-conforming and they don't know any other way to get access. Becky noted there is a hill right behind the house and the neighbor's driveway is ten feet from their window.

Martha noted the Armstrongs are saying changing the porch will provide flat access for elderly people; she'd like to know how the changed porch would compare. David noted it would be one step up to the porch versus six now. Jerry wondered if the porch is going to meet handicapped accessibility with one step; these folks could always put a conforming ramp on with one riser if needed.

Dave Mason noted the ZBA has criteria to meet; there has to be something unique about the Armstrongs' property compared to others in the area; the neighbors are in the same situation as the Armstrongs so he doesn't feel their property is unique. State law allows if, the purpose of the modification is to allow handicapped access for someone that uses the house from time-to-time or lives there, then the Board doesn't have to be concerned with uniqueness. If Becky's father needs handicapped access the Armstrongs might be required to remove the porch upon his demise.

Becky noted their next door neighbors have a large setback from the road and the next house over has setback issues but they have property behind their house to build on. The yellow house on the corner is also a ways away from the road; the Armstrongs' property is unique in that there is nowhere else they can build the porch. The topography of the property is what is unique.

Chairman Benesh feels a more compelling rationale would be to look at the purpose of setbacks which is generally to preserve the streetscape, provide density control, to protect light and the view. There would be no heightened risk of fire and the "neighbor" across the street is a cemetery. Dave Mason thinks the buildings in the area have the same situation but David Matesky thinks the slope is an issue. While the Armstrongs' neighbors are as close to the road as they are; their neighbors have other ways to access their homes.

Chairman Benesh asked if the Board has reached consensus the case for hardship has been met; this was agreed. The Board is saying the slope in the back is a special condition of the property that causes a hardship.

Martha wondered if there is any historical significance to consider in this case. This is not part of the Historical District; Jerry noted even if it was in the Historical District what the Armstrongs are proposing is in keeping with the design of the house.

Chairman Benesh noted the Hearing was publically posted and certified notices were sent to all abutters including the cemetery; all have been returned. He asked if any interested party had any input; there was none.

Chairman Benesh asked the Board to make a determination on the five criteria for granting a variance. The Board agreed:

- The variance will not be contrary to the public interest.
- The spirit of the ordinance is observed.
- Substantial justice is done.
- The values of surrounding properties are not diminished; and
- Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
  - For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- The proposed use is a reasonable one.
- If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

**Dave Mason, seconded by Brian Walker, made a motion to grant the variance. The motion passed unanimously (Benesh, Dougherty, Matesky, Mason and Walker).** As noted earlier; this decision is subject to a request for rehearing by any interested party or the Selectmen for thirty days. The Armstrongs must comply with all other Building and Zoning requirements. This variance is just for the proposed eight by thirty eight foot porch with a roof that is thirteen feet from the ground; they can't enlarge what they have without coming back to this Board.

Chairman Benesh closed the Public Hearing at 7:37 p.m.

**Communication Focus Group** Selectmen's Chair Thompson asked for a time to meet with the Board and was given a time of eight; the hearing ended earlier than projected. The Board waited for five minutes at which time Chairman Benesh noted members who would like to can remain; he would stay to meet with Selectmen's Chair Thompson.

**Dave Mason, seconded by Brian Walker, made a motion to adjourn at 7:42 p.m. The motion passed unanimously (Benesh, Dougherty, Walker, Matesky and Mason).**

Respectfully submitted by:

*Martha D. Tobin*

Recording Secretary