

Town of Jackson Board of Adjustment
Summary of Issues, Findings of Fact and Decision in re
Application of a Variance by Kevin and Patricia Dickie
Case No. 2011-06
November 16, 2011

1. Background

- 1.1. Kevin and Patricia Dickie of 6 Greenwood Avenue, Swampscott, MA (the Applicant) acquired the property 63 Main Street on January 7, 2011 (recorded January 10, 2011 at book 2906 page 330). The property lies in the Village District of the Town and is located across from the Jackson Fire Department.
- 1.2. The existing building essentially lies entirely within the 25' set back from Main Street and is an existing Non-conforming structure under the Jackson Zoning Ordinance. In addition, there is a sharp drop-off on the far side of the building towards the Jackson Pond. Taking into account the side and rear setbacks, there is practically no buildable area in the existing lot.
- 1.3. On July 7, 2011 a building permit was issued for: reframe of the porch and main roof, rebuild of shed roof and dormers and frame 2nd floor, and general remodel work. The proposed work does not increase the foot print of the original structure.
- 1.4. The reframing work on the 2nd floor includes replacing the existing inadequate framing in order to meet current building code and provide for greater insulation. The building inspector noted that reframing of the existing 2nd floor to code will result in an increase in volume due the added height required for the new frame under current building codes. Pursuant to Section 2.2.3, a volume increase is permitted when the change is dictated by considerations of safety, snow disposal or building code requirements and the change does not increase the interior livable floor space within the structure or building.
- 1.5. The Applicant has proposed moving the walls of the 2nd floor approximately 2' in the direction of the front and 2' in the direction of the rear of the building. This would increase the 2nd floor area to be 20'x 20' from 16'x 20' (400 sq ft from 360 sq ft). The new walls locations are required in order to accommodate larger windows. The existing windows do not meet the emergency egress standards.
- 1.6. The Applicant has proposed extending the outside deck located in the back of the building so that it extends along the back of the building (in a northeasterly direction) and 4' beyond the side of the building into the driveway area. The purpose of the extension is to provide a 2nd means of egress from the building. The existing deck does not have a way off the deck without jumping down the steep drop-off towards the back. With the extension, egress to ground would be possible in the event the front door was inaccessible.

2. Issue Raised

- 2.1. The variance application raises the issue of increasing the volume of a Non-conforming structure in regards to the proposed wall changes noted in 1.5 above and in the extension of the back deck noted in 1.6 above, together the “Proposed Changes”.
- 2.2. The issue of volume increase in regards to reframing the roof of the 2nd floor in order to meet current building code was determined to fall under Section 2.2.3 and did not require a variance.

3. Findings of Fact: The Jackson Board of Adjustment finds the following:

- 3.1. The location of the existing building is essentially entirely in the set-back and while this is not a one-of-a-kind situation in Jackson, it does distinguish it from most other properties.
- 3.2. The existing building did not meet current building codes and did not provide for proper egress from the 2nd floor or a safe second means of egress from the building to ground.
- 3.3. The existing footprint of the building is preserved. The existing building was a two story home and will remain so.
- 3.4. The requested variance is not contrary to the public interest. The Proposed Changes do not unduly and to a marked degree violate the basic zoning objective.
- 3.5. The requested variance is in the spirit of the ordinance. The Proposed Changes are being driven by safety and building code considerations and overall do not violate the spirit of the ordinance. The original foot print of the building is preserved and no additional rooms, floors or spaces are created.
- 3.6. By granting the variance, substantial justice is done. The variance strikes a balance between the challenge of addressing current building codes and the issue of increasing the volume of a non-conforming structure located entirely in the set-back.
- 3.7. The values of surrounding properties are not diminished by granting the variance for the Proposed Changes.
- 3.8. Failure to grant the variance would result in an unnecessary hardship. Given the difficult location building and topography of site, the Proposed Changes are reasonable requests to provide for safe egress from the 2nd floor and building.

4. Decision The Board of Adjustment grants the Applicant’s variance request as follows:

- 4.1. The Board of Adjustment grants the Applicant’s variance request to increase the volume of the 2nd floor dormers by the proposed addition of 2’ towards the front and 2’ towards the back of the building.
- 4.2. The Board of Adjustment grants the Applicant’s variance request to extend the deck in the back of the building, along the back of the building so that it extends 4’ beyond the side of the building into the driveway with the following conditions;

- 4.2.1. The deck (entire area, existing and new) will not be converted into a covered or enclosed deck or living space (including enclosing the space under the deck in whole or in part) now or in the future. This is to remain nothing more than a deck.
- 4.2.2. The deck depth measured from the back of the building northerly to the rear property line is not to be increased. The variance is granted to permit extension of the deck northeasterly along the building and 4' into the driveway area only.

It was moved by Mason, seconded by Funicella, and approved to make the Findings of Fact itemized above, and to make the Decisions and take the Actions itemized above.

Voting in Favor: Aubrey, Benesh, Mason, Funicella, and Walker.

Opposed: None

Dated: November 16, 2011