

Town of Jackson Board of Adjustment

Notice of Decision

Case 2015-03: Application for a Variance to allow construction of a deck within the proscribed setback from a road, with regard to 34 Whitney Hill Loop, Map V-05 L-1

Decided August 5, 2015, Decision Published August 10, 2015

Background

- 1) Michael R. Garcia and Christine E. Garcia of Charlton, MA (the "Applicant") are the owners of a parcel shown as Map V05, L1 at 34 Whitney Hill Loop with an approximate size of 0.4 acre containing an existing house.
- 2) Mr. Garcia removed an approximately 4 ft by 4 ft landing and stairs which provided egress for the second floor of the house and constructed an 8 x 12 deck in its place. Both the former stairs and the new deck were entirely or substantially within the proscribed 50 ft setback from a street giving access to the lot (section 4.3.1.2). After the building inspector noted the lack of a building permit, Mr. Garcia applied for a permit and was then denied in a letter dated May 26, 2015 which cited the lack of compliance with the zoning ordinance.
- 3) Mr. Garcia submitted an application for a Variance on July 10, 2015 and a public hearing on this matter was held August 5, 2015.

Findings

- 1) The Board finds that the grant of the variance would not be contrary to the public interest and that the spirit of the ordinance would be observed, given the size of the lot and its location, by a vote of 4-1.
- 2) The Board finds that the benefit to the applicant in maintaining the deck as constructed is not outweighed by any harm to the general public or other individuals, by a vote of 4-1
- 3) The Board finds that the deck will not diminish the value of surrounding properties by a vote of 5-0, based both on it's own views and the absence of any abutters at the public hearing stating the contrary.
- 4) The Board finds that literal enforcement of the zoning ordinance (to wit., the prohibition of construction within the various setbacks) would result in an unnecessary hardship, given the special condition that the Applicant's lot is significantly smaller and more oddly configured than those lots in the surrounding neighborhood. Said special condition distinguish this property from others in the area and the specific application of the ordinance in this case does not have a fair and substantial relationship between the purpose of the ordinance and its specific application to this property. In making this determination, the Board added the requirement that the stairs giving access to the deck must be built so that they lead to the rear of the lot or are otherwise entirely outside of the proscribed setback.

Decision

Given the findings cited above, by a vote of 4-1, the Board of Adjustment grants the requested variance from Section 4.3.1.2 to permit the construction of an 8 x 12 ft. deck adjoining the 2nd floor egress on the Northeast side of the structure, conditioned on the requirement that stairs be constructed that lead to the rear of the house (Northwest) or are not otherwise in the proscribed setback.

This decision may, for 30 days, be subject to a motion for a rehearing from any party of interest or the Selectmen. It should not be considered final until lapse of that period. Copies of this decision are provided to the Applicant, the Planning Board, Board of Selectmen, Town Clerk, Assessor, and Building Inspector.

Pursuant to 674:33-I-a, this variance shall be valid if not exercised within 2 years of the date of final approval.

Frank Benesh, Chairman, Board of Adjustment