

Town of Jackson Board of Adjustment
Summary of Issues, Findings of Fact, and Decision in re
Application for a Equitable Waiver of Dimensional Requirements
by Pine Cone Properties LLC (c/o Patricia Wyhinny)
164 Green Hill Road (map R12 – 168)
Case No. 2010-08
October 20, 2010

1 Background

- 1.1** The Town of Jackson Zoning Ordinance requires, for any structure or building, a 25 ft. setback from an abutter property line, a 50 foot setback from the sideline of any public or Private Road right-of-way, and a 50 ft. setback from the near bank of any year-round stream or body of water which is a property boundary (sec 4.3.1.2 and 4.3.2.3). There are additional requirements in the River Conservation District.
- 1.2** On July 1, 1987 the Town issued a building permit to the prior owner, Helen Mosely, for an addition of a sunroom to the front of the house. The sunroom was intended to be 50 ft from the right of way for Green Hill Road to comply with the Zoning Ordinance. The Building Inspector of the Town of Jackson reviewed the placement of the sunroom according to a June 1987 memo.
- 1.3** On May 5, 1995 the Town issued a building permit to the prior owner, Helen Mosely, for the construction of a garage on the front of the house. The garage was also intended to be 50 ft from the right of way for Green Hill Road.
- 1.4** Pine Cone Properties LLC acquired the property February 3, 2009 (book 2764 page 810).
- 1.5** A 2010 survey provided by the Applicant's architect, Chirstopher Williams, indicates that both the sunroom and the garage were in fact constructed within the proscribed setback. In the case of the sunroom, it is 37' 6" from the sideline of the Green Hill right of way. In the case of the garage, it is 39' 1" from the sideline of the Green Hill right of way.

2 Decision:

- 2.1** The Board of Adjustment grants Equitable Waiver of Dimensional Requirements by making the following findings:
 - 2.1.1** The encroachments into the proscribed setback have existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected,

2.1.2 the encroachment does not constitute a public or private nuisance nor diminish the value of other properties in the area, nor interfere with or adversely affect any present or permissible future uses of any such property, and

2.1.3 that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of construction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

It was moved by Joan Aubrey, seconded by David Urey, and approved to make the Findings of Fact itemized above and to grant the Equitable Waiver.

Voting in Favor: Joan Aubrey, Frank Benesh, Joan Davies, Gino Funicella, David Urey

Opposed: none

Dated: October 20, 2010