

Jackson Board of Adjustment

April 15, 2015

UNOFFICIAL UNTIL APPROVED

Draft May 11, 2015

Members in Attendance: Frank Benesh, Dave Mason, David Matesky and Huntley Allen. Alternates attending the meeting were Martha Benesh and James Gleason. Hank Benesh is the Videographer.

Chairman Frank Benesh called the meeting to order at 7:00 p.m.

Public Hearing - Request for Variance, Owner Caldwell, Map V10, Lot 33-A
Chairman Benesh reopened the Public Hearing for 200 Tin Mine Road at 7:03 p.m.

Attorney Chris Miere is in attendance tonight, as is Dave Caldwell. The Board has received and reviewed the revised plans. The wood ramp will have concrete to grade. One parent has skin cancer; this design does nothing for skin cancer but it provides access; Mr. Caldwell's mom's situation has been downgraded.

As James is new to the Board there was a review of the progress of this application. Dave Caldwell has letters from doctors establishing his mom's disability. This property will be put into a trust and everyone will share in the property. The Board had previously reviewed the application and found it did not meet the hardship requirement. The Board still has the ability to grant the variance due to a disability of a person meant to use the property.

Chairman Benesh closed the Public Hearing at 7:10 p.m. The Board will not be hearing any more testimony. As James is new to the Board he may or may not choose to vote. While James was not sure he would vote on this; he did determine at the time the voting began that he was comfortable voting on this matter. Chairman Benesh noted three votes were required to make a positive vote. As there are different members tonight Chairman Benesh will go through the criteria again.

In regards to Mr. Caldwell's mom, there are three or four things the Board has to decide. Is she a person with a recognized physical disability and will she regularly use the property. If so, is the ramp a reasonable and necessary accommodation? It being necessary is key; the ramp also needs to be in harmony with the intent of the Zoning Ordinance.

The Board unanimously finds that Mr. Caldwell's mother has a recognized physical disability; the Board also unanimously finds that Mr. Caldwell's mother will regularly use the premises.

Chairman Benesh noted he can't see where this is a necessary and reasonable accommodation. He's gone up there and can't help but think there are other ways to do this. They could build a ramp on the other side so as to not violate the ordinance. He finds the proposal neither necessary nor a reasonable way to meet Mr. Caldwell's mother's needs. It was noted a ramp could be both reasonable and necessary. It was noted if there is another way to put a ramp in then they can't call it necessary; it may be more convenient or prettier. Chairman Benesh feels it is unnecessary for the Board to observe the alternative of building on the other side of the house is not more expensive. If it were a substantially different cost he'd like to see that.

Chris doesn't think the Board is reading the statute the right way. It is about reasonable accommodations; a reasonable accommodation is necessary. Dave Mason asked if a reasonable accommodation is necessary; it's possible to run a ramp on that deck and not violate the setback. It would be better to accommodate the owner within the Zoning Ordinance unless it's necessary to violate the ordinance to get into the house. David doesn't think it is ok to violate the ordinance if the owner can get in any other way. Chris disagrees. Chairman Benesh noted each member has their own view of the statute; he's not sure Chris's opinion is going to sway the Board.

Chairman Benesh asked for a vote to find that the proposed solution is a reasonable accommodation that it is necessary. **The Board voted unanimously that the proposed solution is not a reasonable accommodation that is necessary.** There are other solutions.

Chairman Benesh would like the Board to make a determination that the Board believes a ramp on the side would not be materially more expensive than the proposed location. James noted there may be a difference in the price as there is a lot of site work that has taken place. Chairman Benesh clarified the Board would state it believes it would be substantially the same cost to the applicant as building the proposed deck. Dave is sensitive to people and their money but he doesn't believe the cost of the deck is relevant to this situation; David agrees it shouldn't be cost prohibitive.

Chairman Benesh noted the next criteria is to determine if granting this variance would be in harmony with the ordinance. David thinks it is in general harmony; Chairman Benesh believes it is not in harmony. Dave noted the Board decided it's not a reasonable accommodation therefore it has found it's not necessary so the Board doesn't need to do this prong. Huntley noted this was brought to the owner's attention before the porch was built; there were potential solutions to that problem. James asked if there is a reason the porch has to be out front; is there a way to make another accommodation? Chairman Benesh noted there is a deck out there; the Board is not going to grant a variance for a disability so now it will look at hardship. The alternative would be that the variance isn't granted and the Building Inspector orders the deck removed.

Chairman Benesh read the criteria for an unnecessary hardship. **The Board unanimously determined that the application does not meet the unnecessary hardship test.** This property is similarly burdened as others on that side of the street.

The Board unanimously determined that the applicant has shown that the values of surrounding properties will not be diminished.

Chairman Benesh feels finding that substantial justice is done is hard to explain. David believes substantial justice would be done by allowing this. Dave noted the Board doesn't see any loss to the individual as there is another solution. Their loss would be they don't have a front porch; the loss to the public is the violation of the setback. Chairman Benesh would argue the loss to the individual of not having a front porch is outweighed by the gain to the general public in keeping with the ordinance. Chairman Benesh asked if the Board feels the applicant has demonstrated that their loss is not outweighed by the gain to the general public. **The Board voted 1-4-0 (Matesky in the affirmative) that the applicant did not meet the prong.**

The Board voted 4-1-0 (Benesh in the negative) that the spirit of the ordinance is observed.

The Board voted 4-1-0 (Benesh in the negative) that the granting of the variance would not be contrary to the public interest.

Dave Mason, seconded by David Matesky, made a motion to deny the variance. The motion passed unanimously.

Chairman Benesh will generate a decision and Inspector Bennett will also be notified of the decision. The applicant has thirty days to move for a rehearing. Chris is already arguing that the Board is not reading the statute correctly; if he moves for a rehearing then the Board will discuss that with Counselor Malia.

Huntley noted Jerry had brought up the difference between the fifty foot setback and the thirty five foot setback; he'd like more information on that. Chairman Benesh proposes to have some sort of preamble as to this being in the River Conservation District. That was part of the Zoning Ordinance that was proposed and adopted; he would like to see the same thing in other parts of town. Jerry asked the Board to look to the Master plan stating that snow removal was the reason for the setback. Chairman Benesh noted the Master Plan is to retain a rural character of the town and the fifty foot setback is part of that. If Jerry would like to see this area with a thirty five foot setback then he can go to the Planning Board to make that change. The village has a twenty five foot setback. The town should vote on it as an ordinance rather than what was put in the Planning Board Master Plan. There is also the desire to reduce the number of nonconforming structures in town. Chairman Benesh noted, given all of that, whatever Board members think of the thirty five, fifty or twenty five foot setbacks; they still have to find something unique about the property and in this case the Board didn't see that. Chris tried to sell the idea

that other owners in the neighborhood built closer so this is a disadvantaged property. Counselor Malia doesn't think so.

Dave Mason, seconded by David Matesky, made a motion to adjourn at 7:47 p.m. The motion passed unanimously (Benesh,).

Respectfully submitted by:

Martha D. Tobin

Recording Secretary