

Town of Jackson Board of Adjustment

Notice of Decision

Case 2013-03: Motion by Board of Selectman to Rehear Ruppel Variance
concerning Map V07, Lot 123 (originally case 2012-02)

Decided May 15, 2013, Decision Published May 27, 2013

Background

- 1) The Board of Adjustment (the 'Board') granted a variance to Robert Ruppel in a March 20th meeting with the decision published on March 26th. (see attached decision dated March 26th)
- 2) The Building Inspector, acting as an agent of the Board of Selectman ('BOS') filed a motion for a rehearing on April 19th, 2013. The Board of Adjustment finds that the motion was filed with the board within the statutory time limit.
- 3) The BOS argue that the grant of the variance is contrary to the public interest in that "it is possible the town may bear liability for damage to this structure incurred during the normal course of road maintenance / snow removal". The motion makes no further argument about the mechanism of damage, but the Board presumes this is because the proposed structure is ten feet from the property line and within approximately 15 feet of the traveled way; given this proximity, the Board believes the BOS's concern is that snow may be plowed by the town onto the roof of the garage and thus damage the roof. The Board did not explicitly consider this risk, though it did impose the condition that evergreen plantings be placed in the ten foot wide strip between the property boundary and the proposed garage.

This is evidence that was not presented either the March 20th or December 12th hearings on this variance. The Board finds that this evidence so speculative that it is not sufficiently persuasive to grant a motion for a rehearing, in that the chance of damage seems remote (given the 10 ft distance and the evergreen plantings). The Board also finds that this is not new evidence but information that could have been brought up at the prior hearings, had the BOS or other parties so chosen. If introduced at the hearing by the BOS, then it would have been the Applicant's burden to overcome it. The Board would have also have had to find that preventing such damage was one of the goals of the zoning ordinance, as described in the master plan. It is unfair to Ruppel (the 'Applicant') to force a rehearing for something that could have been argued at the hearing by the BOS and which seems so speculative.

- 4) The BOS argue that the grant of the variance is contrary to the public interest in that "the construction of this structure could potentially undermine the road surfaces as it is proposed to be constructed in to the slope of the road". The Board did consider this possibility in the deliberations for the grant of the variance and noted in the decision that the town could require a bond for potential damage as a condition of a permit. The town may also require plans for approval of site disturbance and how it will be managed before a permit is issued. Beyond that aspect, the Board considers this a building code issue and not a zoning issue, as the building code will require the retaining wall to be engineered and the Building Inspector must approve the building plans, including method of construction.

- 5) The BOS argue that the grant of the variance is contrary to the public interest in that “the construction of this garage could block sight lines on the road, potentially creating a blind driveway hazard.” This is evidence that the Board did not consider in granting the variance. The BOS motion makes no further explanation of how the sight lines are blocked; indeed, it is the Board’s understanding of geometry is that the existing sight lines are not further blocked, given the existing foliage and that the roof of the garage is to be at the elevation of the North Hampshire Ridge Road. The Board finds that this evidence is speculative and not sufficiently persuasive as a basis to grant the motion for a rehearing. Again, this is evidence that could have been presented at the prior hearing, had the BOS or other parties so chosen.
- 6) The BOS argues that substantial justice is not done as ‘the potential benefit to the applicant outweighs the potential harm to the general public’. Here the BOS motion misapplies substantial justice test, which is to consider “whether the loss to the Applicant is outweighed by a gain on the general public.” The Board did make such a finding in granting the variance.
- 7) The BOS make note that they saw no testimony to support a finding that the value of the surrounding properties are not diminished. In fact at least three of the abutters were present at the hearing and all spoke in favor of granting the variance and cited same in the published decision.
- 8) Finally, the BOS argue that there is no hardship for the Applicant, in that the Applicant could build the garage at other locations on his property. The Board believes this misconstrues the hardship test. The question is not whether the Applicant has alternatives that might achieve some or all of his ‘needs’. The relevant test is whether the hardship imposed on the Applicant by the zoning ordinance (preventing what he could otherwise do in absence of zoning) has a fair and substantial relationship to the general public purposes of the ordinance owing to the special conditions of the property that distinguish it from others in the area. The Board made precisely that finding in it’s decision.

Decision

The Board of Adjustment denied the motion for a rehearing by a vote of 5-0.

Copies of this decision are provided to the Applicant, the Planning Board, Board of Selectmen, Town Clerk, Assessor, and Building Inspector.

Town of Jackson Board of Adjustment

Notice of Decision

Case 2012-02: Robert Ruppel Variance concerning Map V07, Lot 123

Published March 26, 2013

Background

- Robert Ruppel (the "Applicant") is owner of a 61,652 sq. ft. parcel (approximately 1.4 acre) located at Map V07, Lot 123 at 35 N. Hampshire Ridge Road.
- The lot is a rectangle of circa 400 ft. by 150 ft. (with one rounded corner) that has is bounded on two sides by North Hampshire Ridge Road.
- With a fifty foot setback from the lot lines adjoining N. Hampshire Ridge Road and a twenty five foot setback from other property lines, the proscribed setback represents approximately 41,000 sq. ft. $(400 + 150) \times 25 + (400 + 150) \times 50$ or 66% of the subject parcel.
- The portion of the parcel not within the proscribed setback is thus approximately 20,000 sq. ft and contains an existing structure with an approximate foot print of 40 x 30 ft or 1200 sq. ft. - representing 6% of the land not within the proscribed setback and 2% of the entire lot. This calculation ignores any easements that may exist.
- The Applicant has applied for a variance to build a 24 ft. by 24 ft. two car garage with loft (building height of approximately 22 ft.) with some portion of the garage will intruding on the proscribed setback. The Applicant proposes to locate the garage within the proscribed setback given the sloping terrain of the remainder of the property, the location of the well, the location of the existing driveway and the need to access the septic system on the back side of the house.
- The initial variance application indicated that about one-half of the garage would intrude 15 ft. into the proscribed 50 ft. setback from North Hampshire Ridge Road. A subsequent survey prepared at the Board of Adjustment's request indicates nearly the entire garage would be within the 50 ft. setback from the property line or easement for the road.
- The proposed garage would be built into the hillside under North Hampshire Ridge Road. The variance application indicates that the roof of the garage will be below the finished grade of North Hampshire Ridge Road.

Findings

- Granting the variance would not be contrary to the public interest, given the Applicant's assertion to that fact, the proposed garage's minimal visibility from other properties in the area, and the support of all abutters who attended the hearing and absence of statements from any abutter that objected. The Board of Adjustment could not identify any detrimental impact nor any way the project would alter the essential character of the neighborhood. To ensure this, the Board of Adjustment is including conditions that

limit the height of the garage, the color of the roof, and requiring plantings as a screening device.

- The spirit of the zoning ordinance is observed. The Board of Adjustment determined that incursion into the setback would not alter the essential character of the neighborhood given the minimal visibility (further assured by a condition of approval) nor does it threaten the public health, safety or welfare.
- Substantial justice is done, as the Board of Adjustment could identify no resulting public benefit and the denial of the variance would result in a loss to the Applicant.
- The Board of Adjustment determined that the values of the surrounding properties are not diminished. In reaching this finding, the Board noted the support of abutters at the public hearing and the absence of objections from any abutter.
- The Board of Adjustment determined that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. In reaching this conclusion, the Board noted the following
 - The Applicant's property has 20,000 sq. ft. of area within the proscribed setbacks, but the rectangular configuration, existing structures, and the steep terrain make siting a garage elsewhere on the property infeasible or at least substantially more costly.
 - The density of structures on the Applicant's property will remain low, with the percentage of the lot within the proscribed setback occupied by structures and increasing from 6% to 9%. Thus one of the objectives of setbacks, building density, is still preserved.
 - The proposed garage is expected to have a minimal visible impact on the portion of North Hampshire Ridge Road nearest the garage. To ensure this, conditions are added to the variance, most notably that the ridge of the garage roof or any other part of the structure may not be more than four feet higher than the elevation of North Hampshire Ridge Road (measured by a line perpendicular to the traveled way extending to the garage). Thus another objective of setbacks, intrusions on neighboring property owners or public ways is still preserved.
 - Special conditions of the Applicant's property that distinguish it from other properties in the area include (1) its rectangular shape coupled with roads (with fifty foot setbacks) that define two of the property lines and result in 66% of the subject lot being in proscribed setbacks, and (2) sloping terrain. The general public purposes of controlling density of development and intrusion of structures on adjacent parcels, when applied to this property, are preserved as the density of the structures on the property are remain far less allowed by current zoning (at 9% of the allowed building area) and visibility of the proposed structure is nil or, at worse, negligible.
 - The proposed use of constructing a garage is reasonable.

Decision

The Board of Adjustment grants the requested variance from section 4.3.1.2.i of the Jackson Zoning Ordinance subject to the conditions listed below:

- 1) The intrusion of the structure into the 50 ft. setback from the property line adjoining North Hampshire Ridge Road is limited to 40 ft.
- 2) The height of the roof ridge of the garage or any other part of the structure can be no more than 2 ft. higher than the elevation of North Hampshire Ridge Road, measured by a line perpendicular to the traveled way of North Hampshire Ridge Road that is southeast of the proposed garage site and closest to the Garage.
- 3) The roof of the garage will be a neutral color chosen such that it blends into the landscape, such as brown or green.
- 4) Evergreen plantings are to be placed between the garage and North Hampshire Ridge Road.

Note that the Selectmen, any party to the action or any person directly affected has a right to appeal this decision during a 30 day period.

The Applicant is cautioned that this Variance relates only to the cited portion of the Town of Jackson Zoning Ordinance and does not address any easements or restrictive covenants that may be present. The Applicant must still comply with the requirements of the Town of Jackson Building Codes, other portions of the Town of Jackson Zoning Ordinance, and other State and Municipal requirements. It is also noted that the Building Inspector may impose additional requirements given the proximity of the excavation to the traveled way and/or request a bond to remedy potential damage to a town road.

Copies of this decision are provided to the Applicant, the Planning Board, Board of Selectmen, Town Clerk, Assessor, and Building Inspector.

** note that an earlier version of this document was published with the roof ridge condition listed as 4 ft instead of 2 ft. **