

Town of Jackson Board of Adjustment

Notice of Decision

Case 2013-05: Application for Variance from Section 4.1.3 of the Town of Jackson Zoning Ordinance (limiting building heights to 35 feet) for the property located at 1 Carter Notch Road known as the Wentworth Hotel (tax parcel Map V-02, Lot 10-G) in the Village Zoning District, submitted by Claude Pigeon of Couture Construction, Berlin NH, acting as agent for owner, The Wentworth Hotel of Jackson, Inc. The applicant proposes to construct a building with a height of approximately 46 feet.

Decided August 21, 2013, Decision Published September 2, 2013
(corrected February 5, 2014)

Background

- 1) The Wentworth Hotel of Jackson, Inc., is owner of an approximately 3.7 acre parcel located at 1 Carter Notch Road (tax parcel Map V-02, Lot 10-G).
- 2) A building permit application for an addition to the hotel structure on the subject property was denied by the Town of Jackson on May 2nd, 2013 citing nonconformance with Section 4.1.3 of the Town of Jackson Zoning Ordinance which limits building heights to 35 ft. Applicant proposes to build an addition to the hotel with a height of approximately 46 ft., matching the height of the existing hotel structure.
- 3) The public hearing provided testimony that, with one exception, there was no living space located on the fourth (attic) floor nor in excess of 35 ft. The exception consists of two hot tubs located in an upper level of two rooms, where the railing height above ground was said to be 32 feet.
- 4) The Fire Department has provided the view that, in view of the addition being sprinklered, fully alarmed and up to date building codes, the height of the building over 35 feet is acceptable, with the conditions that there be adequate access and a fire lane in the rear of the building. This view was provided with the expectation that there was no living space above 35 feet.

Findings

- 1) Based on a review of the Master Plan and statements from the Chairman of the Planning Board, the Board of Adjustment finds that the purpose of the height limit in the Zoning Ordinance is most probably fire safety, with secondary considerations of protecting views and promoting the rural nature of the village district.
- 2) The Board finds that the granting of the variance, with the conditions noted below, will not be contrary to the public interest and neither alters the essential character of the neighborhood nor violates the basic zoning objectives (subject to the conditions noted below).
- 3) The Board finds that the spirit of the zoning ordinance is observed and, with the conditions noted below, does not threaten the public health, safety, or welfare.

- 4) The Board finds that, by granting the variance, substantial justice is done and that the potential loss to the applicant, if denied, is not outweighed by a gain to the general public.
- 5) The Board finds that literal enforcement of the height restriction of the zoning ordinance would cause an unnecessary hardship for the Applicant. In making this finding, the Board notes
 - a) The conditions cited below adequately protect the interests of the general public,
 - b) The property, given it's lot size in comparison with the surrounding properties, the size of the building in comparison with the surrounding properties, and the historic nature and height of the existing building are special conditions of this property that uniquely distinguish it from other properties in the area,
 - c) No fair and substantial relationship exists between the public purpose of the height restriction and the application of that restriction to the subject property (after giving effect to the cited conditions).
 - d) The proposed expansion of the hotel with the same height as the existing building is reasonable.

Decision

Given the findings cited above, The Board of Adjustment grants the requested variance to the requirements of 4.1.3 by a vote of 5-0, with the following conditions:

- 1) This variance is for the proposed addition as presented in the variance application and the public hearing held August 22' 2013, or substantially identical in height and footprint in the sole discretion of the Building Inspector.
- 2) Fire lanes and access to the structure is acceptable, during construction and after completion, in the sole discretion of the Fire Chief and the Fire Inspector
- 3) The use of the fourth floor for two hot tubs must be acceptable to the Fire Chief, the Fire Inspector I and the Building Inspector, in their sole discretion. This may include the imposition of requirements more restrictive than in the relevant codes or the prohibition of such use entirely.
- 4) No other occupancy of the fourth floor is permitted.

The determinations made by the Building Inspector, Fire Chief and Fire Inspector in conditions #2 and #3 may, at their discretion, exceed the requirements of any code or ordinance and may be done in consultation with other parties.

This decision relates only to the denial of the building permit for failure to comply with Section 4.1.3 of the Town of Jackson Zoning Ordinance, Any proposed structure must still comply with all other requirements and ordinances, including but not limited to the Town of Jackson Zoning Ordinance, Building Code Ordinance, Road and Driveway Standards, fire codes and State septic requirements.

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.

Frank Benesh, Chairman, Board of Adjustment

The original decision was revised to corrected an error in the original decision that referenced the third floor rather than referring to the fourth.

Background

3) The public hearing provided testimony that, with one exception, there was no living space located on the ~~third~~ fourth (attic) floor nor in excess of 35 ft. The exception consists of two hot tubs located in an upper level of two rooms, where the railing height above ground was said to be 32 feet.

Decision

- 3) The use of the ~~third~~ fourth floor for two hot tubs must be acceptable to the Fire Chief, the Fire Inspector I and the Building Inspector, in their sole discretion. This may include the imposition of requirements more restrictive than in the relevant codes or the prohibition of such use entirely.
- 4) No other occupancy of the ~~third~~ fourth floor is permitted.