

Town of Jackson Board of Adjustment

Notice of Decision

Case 2015-05: Application for a Variance to allow construction of 9x5 ft. bathroom addition within the proscribed setback at 226 Green Hill Road, (parcel R12 Lot 164).

Decided December 15, 2015, Decision Published January 6, 2016

Background

- 1) Joanne and Allen Brooks (the "Applicant") are the owners of a approximately two acre parcel at 226 Green Hill Road, (parcel R12 Lot 164), per deed dated 1/16/1998 and recorded at Book 1732 Page 706. This includes the former parcel R12, Lot 164 which was merged 8/9/2011 and recorded at Book 2943 Page 942.
- 2) A Building Permit Application filed 11/4/2015 for construction of a 9ft by 5ft bathroom addition at the rear of the structure was denied by the Building Inspector, as the proposed addition at the rear of the building was within the proscribed front setback from the road; indeed the entire house is within the proscribed front setback.
- 3) The Applicant filed an Variance Application to permit the proposed addition on 11/11/2015 which was supplemented by additional materials in the following week. A Public Hearing was held 12/16/2015 by the Board of Adjustment.

Findings

- 1) The Board finds that granting a variance would not alter the essential character of the neighborhood nor would it threaten the public health, safety, or welfare. The board thus finds that
 - a) The requested variance would not be contrary to the public interest.
 - b) The spirit of the ordinance would be observed if the variance is granted.
- 2) The Board finds that the loss to the applicant, if the variance were denied, outweighs any gain to the public from enforcement of the setback provisions of the zoning ordinance as adopted by the Town of Jackson. The Applicant would suffer a loss from being unable to build the addition. The Board determined there was no gain to the public as - regardless of the purposes of the front setback - it does not have any applicability to construction at the rear of the structure.
- 3) Based on the absence of testimony to the contrary and the Board's own opinion, the Board finds that the values of the surrounding properties are not diminished.
- 4) The Board finds that the applicant has demonstrated that, owing to special conditions of the property that distinguish it from others in the area, no fair and substantial relationship exists between the general public purposes of the setback provision of the zoning ordinance and the specific application of that provision to the subject property. This is based on the following findings:
 - a) The structure on the subject property is entirely within the front setback of 50 feet from the right of way of the street giving access to the property. This distinguishes it from others in the area.
 - b) The construction of an addition at the rear of the structure does not conflict with any of the purposes of the front setback.

Decision

Given the findings cited above, by a vote of 5 to 0, the Board of Adjustment **grants** the variance requested by the Applicant.

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