

---

## Case 2010-06 John and Jennifer Healy July 23 2010

### **Town of Jackson Board of Adjustment Summary of Issues, Findings of Fact, and Decision in re Application of a Variance by John and Jennifer Healy Case No. 2010-06 July 23, 2010**

#### **1 Background**

**1.1** John Healy and Jennifer Healy of 73 Westbury, Avon CT 06001 ('the Applicant') acquired the property at V09 lot 26 (65 Thorn Hill Road) Jan 6 2010 (recorded Jan 8 2010 at book 2838 page 50). The property lies in the Rural Residential District of the Town.

**1.2** An August 8, 1988 building permit to a prior owner provided for the addition of a 12 ft x 24 ft. deck on the East side and rear of an existing 32 ft. x 16 ft. residential structure. This application indicated that the rear of the house was 40 ft. from the rear property line, suggesting that the rear setback would be less 12 ft. from the rear of the house.

**1.3** The Applicant has appointed Tamarack Construction of Jackson NH as agent for appearing before the Board of Adjustment.

**1.4** A May 19, 2010 building permit application to construct a screen porch onto the existing footprint of the deck, expand the deck into the allowable building envelope, and install a new roof and siding was denied by the Board of Selectman. The permit application indicated that the existing deck was in fact approximately 14 ft. from the rear property boundary and thus 11 ft within the 25 ft setback. The permit was denied as the proposed construction would violate Section 2.2.3 of the zoning ordinance by altering the structure so that it extends to a greater height within the proscribed Setback area and increases the volume of the structure or building within the proscribed Setback area.

**1.5** The subject property is long and narrow. A survey drawing dated June 16, 2010 by Ammonoosuc Survey Company based on a survey of May 12, 2004 indicates that the property is approximately 275 ft long (fronting Thorn Hill Road) and approximately 90 ft deep. The area outside of the proscribed 50 ft setback from a road and 25 ft setback from a property line, that is, the building envelope, is a triangular area that is approximately 15 ft deep. The existing house extends into both the front and rear setback. Approximately 40% of the existing house extends into the 50 ft. front setback. Approximately 50% of the existing deck extends into the 25 ft rear setback.

**1.6** Unlike the Applicant's 0.6 acre property, the adjoining parcels are substantially larger and more compact in configuration. For example R14-17 (Hartmann) is 3.6 acres, V09-27B (Cooper) is 2 acres, V09-27A (Cooper) is 27 acres, and V09-25C (Rattay) is 2.2 acres.

**1.7** In June 2010 Tamarack Construction, acting as agent for the Applicant, requested a variance from the section 2.2.3 of the ordinance, citing no fair and substantial relationship between the general purpose of the ordinance and the application of the ordinance to this property as a result of the very long and narrow nature of the property.

#### **2 Issues Raised**

**2.1** The variance application raises the issue of the question of hardship – does the literal enforcement of the ordinance result in unnecessary hardship, which effectively means either (a) no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to this property, or (b) owing to the specific conditions of this property that distinguish it from other properties in this area, the property cannot be reasonably used in strict conformance with the ordinance.

**3 Findings of Fact:** The Jackson Board of Adjustment finds the following:

**3.1** That the configuration of the Applicant's lot is a specific condition that clearly distinguishes it from other properties in this area, in that

**3.1.1** The other properties, especially the adjoining properties, are both substantially

larger in size and more compact (that is not long and narrow). As a result, all the adjoining properties have buildable areas within the proscribed setbacks that are substantially greater than this property

3.1.2 The rear property boundary (where the deck intrudes upon the setback) is continuous to a parcel which has low lying wetlands and is not likely to be built on. The wetlands then adjoin a road on the same property. Consequently the intrusion into the setback is on a property boundary that is less intrusive than it would be if it adjoined a more developed or a more easily buildable property and is unlikely to injure the public or private rights of others.

3.2 To further limit any injury to the public or private rights of others, the Board of Adjustment will attach a condition to this variance that the screen porch must not be converted to a more intrusive year round use by enclosing the porch with glass or windows, winterizing the porch, or making other similar changes.

3.3 There was no evidence presented at the public hearing that this variance would be contrary to the public interest. With the condition outlined above, the Board of Adjustment finds that this is not contrary to the public interest

3.4 The Board finds that the spirit of the ordinance is observed, in that this modest increase in the volume of a non-conforming structure is balanced by the hardship that would otherwise occur.

3.5 The Applicant has also requested a variance for a further intrusion into the setbacks by the overhangs of the proposed roof. The Board of Adjustment finds that there is no hardship for the Applicant, as a screened porch can be constructed without this further intrusion into the proscribed setback.

3.6 The Board also finds that while technically the volume or height of the structure within the setback has been increased contrary to Section 2.2.3, this is mitigated by the fact that there is no increase in the useable footprint of the structure in the setback and that the height of the resulting structure will still be approximately 20 ft. below the 35 ft. height limitation in the Zoning Ordinance.

**4 Decision:** The Board of Adjustment grants the Applicant's variance request to increase the volume of the porch that is within the proscribed setback with two conditions

4.1 the existing area of the deck within the proscribed setback is not increased in any manner, specifically including any eaves or roof overhangs,

4.2 that the screened porch cannot at any time in the future be enclosed with glass, insulated, finished or otherwise converted to year round use.

It was moved by Funicella, seconded by Davies, and approved to make the Findings of Fact itemized above, and to make the Decisions and take the Actions itemized above.

Voting in Favor: Aubrey, Benesh, Davies, Funicella, and Urey

Opposed: None

Dated: July 23<sup>rd</sup>, 2010