



COOPER
CARGILL
CHANT

ATTORNEYS AT LAW

April 23, 2021

VIA HAND DELIVERY

Town of Jackson
The Board of Adjustment
54 Main Street
PO Box 268
Jackson, NH 03846

RE: William & Francis O'Shea
Sugar Hill Lane, Tax Map V-4, Lot 8, Jackson, NH
Our File Number: 21728.000

Dear Board,

In regards to the matter stated above, enclosed for filing please find an Application for Variance with accompanying documents. Also enclosed is our firm check in the amount of \$75.00 for filing of the same.

Thank you for your attention to this matter. Please let me know if you have any questions or concerns.

Very truly yours,

COOPER CARGILL CHANT, P.A.

Christopher T. Meier
cmeier@coopercargillchant.com

CTM/kjt
Enclosures
cc: Clients

Y:\CLIENT FILES\21728 - O'Shea\Septic Review-Town of Jackson\Correspondence\2021.04.19 Town of Jackson, BOA.docx

APPLICATION FOR A VARIANCE

RECEIVED

APR 26 2021

Selectmen's Office



PAID
\$75 CE# 31969

Do not write in this space.

Case No. _____

Date Filed _____

(signed - ZBA)

To: Zoning Board of Adjustment,

Town of Jackson

Name of Applicant William O'Shea and Francis O'Shea

Address PO Box 990, Glen, NH 03838

Owner Same

(if same as applicant, write "same")

Location of Property Sugar Hill Lane, Sugar Hill Subdivision, Tax Map V-4, Lot 8
(street, number, sub-division and lot number)

NOTE: This application is not acceptable unless all required statements have been made.
Additional information may be supplied on a separate sheet if the space provided is inadequate.

Application for a Variance

A variance is requested from article 6 section 6.1.5, 6.1.7 of the zoning ordinance to permit construction of a 3-bedroom home despite the 2017 change in required lot size.

Facts in support of granting the variance:

1. Granting the variance would not be contrary to the public interest because:
See attached.

2. If the variance were granted, the spirit of the ordinance would be observed because:
See attached.

3. Granting the variance would do substantial **justice** because:

See attached.

4. If the variance were granted, the **values** of the surrounding properties would not be diminished because:

See attached.

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in **unnecessary hardship** because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

See attached.

- and -

ii. The proposed use is a reasonable one because:

See attached.

b. Explain how, if the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

See attached.

Applicant Win Olan
(Signature)

Date 4/23/21

OH

4/26/2021

Addendum to Application for Variance

Owner: William and Francis O'Shea

Tax Lot: Map V-4, Lot 8, Sugar Hill Lane, Sugar Hill Subdivision ("Property")

Facts supporting this request:

The O'Sheas seek to build a three-bedroom house on the 1.19 acre Property, which was allowed when they bought the Property in 2016. The O'Sheas purchased the Property with a 3-bedroom septic design approved by the Town of Jackson and NHDES. The O'Sheas were not able to build within the 4-year window, and were therefore required to obtain a new septic design.

As noted by the Town Engineer, in 2017, the Town changed the computation for a three bedroom house from 75% of the area needed for a 4-bedroom house to 83% of the same area. The O'Shea's Property has 77%, and therefore while meeting all NHDES requirements, and meeting the old Jackson standard, the Property does not meet the new more stringent Jackson requirement.

While NHDES standards would allow substantially more than 3 bedrooms, the deficiency under the new Jackson standard is not even a 1/10 of an acres (0.09 acres). In part, it is the topography of the Property that causes the issue, as certain slopes on the Property do not permit use of a portion of the Property for density purposes; nor do certain soils on the property. The O'Sheas are requesting a variance from the new Jackson standard so that they can put the Property to the use intended when they bought this lot – a three-bedroom home.

1. Granting the variance would not be contrary to the public interest:

With regard to assessing public interest, the NH Supreme Court has set the standard as follows: "[T]o be contrary to the public interest or injurious to the public rights of others, the variance must **unduly, and in a marked degree** conflict with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club v. Town of Chester, 1523 N.H. 577, 581 (2005). It looks at whether the variance would "alter the essential character of the locality," whether it would "threaten public health, safety or welfare," or "violate basic zoning objectives."

As noted – through 2017, this Property would have been sufficient for a three-bedroom property – and accordingly most homes in Jackson are under the old standard. The use meets (and substantially exceeds) all NHDES density requirements for septic capacity. The deficiency under the new more stringent standard is only 0.09 acres. A variance would not "unduly, and in a marked degree, conflict" with the ordinance such that the use violates the ordinance's basic zoning objectives. Moreover, the variance would not be observable, nor cause any actual impact on surrounding properties, the neighborhood, or the Town.

2. The Spirit of the Ordinance is observed:

The stated purposes of the Jackson Town Ordinance is to: “(1) preserve and promote the health, safety and general welfare of the Town of Jackson; (2) maintain and enhance the economic health of the Town; and (3) Provide adequate social and municipal services for the townspeople; all in a manner consistent with preserving the cultural heritage and the rural village character of the Town, while managing land use and regulating development to ensure wise stewardship of the Town’s natural resources” Ordinance, at 1.2. This project would not detract from the health, safety, or welfare of the Town – the project meets all NHDES criteria for density; the project would promote, rather than detract from, the economic health of the Town, as it would increase the tax base and promote a reasonable use of Property; it would not detract from the provision of services; nor would it detract from the cultural heritage or rural village character of Jackson – most of which was built with the prior standard or less restriction.

3. Granting the variance would do substantial justice because:

The NH Supreme Court has indicated that the grant of a variance will achieve “substantial justice” if, in the absence of the variance, there would be a loss to the property owner that is not outweighed by a gain to the general public. Farrar v. City of Keene, 158 N.N. 684 (2009). Here, the loss to the property owner if they could not build would be significant – they purchased this Property with the intent of building a three bedroom home, and this would be lost.

Conversely, there is no cognizable harm to the general public from the grant of this variance – the variance from the current standard is only 0.09 acres and would not be discernible or observable; the home would be consistent with all homes built prior to 2017; and the home would meet and exceed all NHDES standards.

4. For the following reasons, the values of surrounding properties would not be diminished:

This project is scaled similarly and designed in keeping with the surrounding homes. If at all, this project will increase the value of surrounding properties. No diminution in any value will arise from this project.

5. Owing to the special condition of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

A. No fair and Substantial Relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

This application is for an area variance for 0.09 acres of density, which is only needed because of a change in the Ordinance in 2017 – after the O’Sheas purchased this lot with the intent of building a three bedroom home. The variance is a minor one from what is now required – 0.09 acres on a 1.19 acre lot – which certainly would not be observable by any neighbor or townspeople. The new density requirement is likely related to septic loading – however this lot

far exceeds the NHDES requirement for septic density on this lot, and therefore will not detract from the ability to install an appropriate septic system and therefore not affect public safety and welfare.

The (small) deficit under the new more stringent requirement arises because of special conditions on this Property – both the slopes and the existence of certain soils do not permit the entire area of the Property to be used for the computation of density under Jackson’s Ordinance.

In the case of this project, the rights of others will not be negatively affected; and the project should and will promote the same goals as promoted by the Ordinance – i.e. allowing townsfolk to use their Properties for their intended purposes, while maintaining the health and safety of the Town (including maintaining appropriate density). The general purpose of the ordinance, to promote the general welfare while retaining the essential character of the Town of Jackson, can and will be met while allowing this variance from an area provision.

B. The Proposed Use is a reasonable one because:

The proposed use is residential and is allowed by the Ordinance.

| List of Abutters | Address | Tax Lot No. |
|--------------------------------------------------------|-----------------------------------------------|--------------------|
| William J. & Dorothy Jenkins | PO Box 471 Jackson, NH 03846 | V04, 7 |
| Christopher E. & Theresa R. Fahey Michael K. Harvey | 1559 Bay Street, Apt. 44 Taunton, MA 02780 | V04, 5 |
| Joseph H. Haskett Kirsten E. Murphy | 228 Transit Street Providence, RI 02906 | V04, 4 |
| Brookside Farm, LP | PO Box 823 Jackson, NH 03846 | V04, 38-2 |

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Jackson, NH 03846

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Christopher E. & Theresa R. Fahey
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Joseph H. Haskett
Kirsten E. Murphy
228 Transit Street
Providence, RI 02906

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228 Transit Street
Providence, RI 02906

April 20, 2021

Jackson Board of Adjustment
PO Box 268
Jackson, NH 03846

RE: **LETTER OF AUTHORIZATION**

Request for Variance Application

Owner: William and Francis O'Shea

Location: Sugar Hill Lane, Jackson, NH - Tax Map V-4, Lot 8

CCC File No.: 21728.000

Dear Board:

In regards to the matter stated above, I hereby authorize Cooper Cargill Chant, or any representative thereof, to file on my behalf and represent me at any meeting.

Thank you for your assistance in this matter.



William O'Shea

STATE OF NEW HAMPSHIRE

DEPARTMENT
OF
REVENUE
ADMINISTRATION



REAL ESTATE
TRANSFER TAX

****1 THOUSAND 1 HUNDRED AND 00 DOLLARS

12/27/2016

910847

****1100.00

VOID IF ALTERED

Doc # 0013734 Dec 27, 2016 3:33 PM

Register of Deeds, Carroll County

Lisa Scott



WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS: That we, **Thomas Ramsey Jones and Judith Dyer Jones**, Husband and Wife, both having a mailing address of 12523 Windover Turn, Bowie, Prince George's County, Maryland (20715), for consideration paid grant(s) to **William F. O'Shea and Frances D. O'Shea**, Husband and Wife, both having a mailing address of PO Box 990, Glen, Carroll County, New Hampshire (03838), as Joint Tenants With Rights of Survivorship, with **WARRANTY COVENANTS**:

A certain piece or parcel of land with improvements thereon, located on the southerly side of Sugar Hill Lane, so-called in the Town of Jackson, County of Carroll, State of New Hampshire, being Lot No. 8 as shown on entitled "Plan of Land in Jackson, N.H., A Portion of Property of Evergreen Trust Subdivision Plan" surveyed May 1969 and recorded at the Carroll County Registry of Deeds in Plan Book 20, Page 58 on December 17, 1971, and being more particularly bounded and described as follows:

Beginning at a point southerly of station 16+52.9 on the center line of said Sugar Hill Lane;

Thence South 33° 44' West a distance of two hundred, sixty-two and one tenth feet (262.1') along Lot #7 to a point;

Thence North 73° 40' West along other land of Evergreen Trust to a point marked by an iron pipe;

Thence running North 05° 45' West a distance of two hundred, twenty-five and seven tenths (225.7') along Lot #9 to a point on the southerly line of the right-of-way opposite station 19+81.5 on the center line of said road;

Thence turning and running South 80° 45' East and South 80° 51' East along said roadway to the point of beginning.

This is not homestead property.

Meaning and intending to convey the same premises as described in the Warranty Deed of Henry H. Atwell and Donald H. Atwell, Trustees of the Evergreen Trust to Thomas Rumsey Jones and Judith Dyer Jones dated November 16, 1971 and recorded at the Carroll County Registry of Deeds in Book 502, Page 227 on December 17, 1971.

Executed this 22 day of December, 2016.

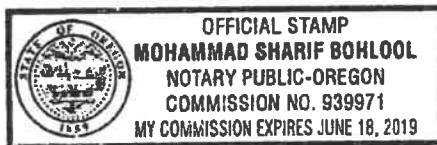
Thomas Rumsey Jones
Thomas Rumsey Jones

Judith Dyer Jones
Judith Dyer Jones

STATE OF OR
COUNTY OF WA

On this 22 day of December, 2016, before me, the undersigned notary public, personally appeared Thomas Rumsey Jones and Judith Dyer Jones who proved to me through satisfactory evidence of identification, which was [] a valid Driver's License or [] DL, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Seal:



[Signature]
Notary Public

Mohammad Sharif Bohlool
Notary Public (Printed Name)
My commission expires: 6/18/19

Civil Solutions, LLC
INTEGRATING PEOPLE WITH THE ENVIRONMENT

MEMORANDUM

Date: June 2, 2020 Project#: 2005-005
To: Bob Tafuto – Ammonoosuc Survey Co.
From: Burr Phillips, PE, CPESC
Re: William & Francis O'Shea, Tax Map V-4, Lot 8
Town of Jackson - Septic System Design Review

√ Copy to File
√ Copy to Others: Town of Jackson, Attn: Selectmen's Office & Building Inspector

Comments:

Civil Solutions, LLC has reviewed the above-referenced septic system design on behalf of the Town of Jackson. Based on the 5/7/2020 plan, we regret to inform you that the design has been denied for the following reasons:

1. The parcel will not support three bedrooms based on the calculations provided and the town's lot-size requirements contained in the current zoning ordinance. The lot provides just 76% of the minimum lot size whereas 83% is required. A two-bedroom dwelling would comply with the town's requirements.
2. The design shows the house and garage at an elevation that makes it impossible to construct the driveway complying with the maximum grades allowed by the town's driveway standards. It appears very feasible to revise the house and garage layout to adhere to the driveway standards.

Should you have questions, please feel free to contact me.

10/2/2020

RE: O'Shea septic lot loading

From: "Burr Phillips" <burr@c-solutions-llc.com>

To: "Burke York" <b.york@yorklandservices.com>

Cc: "Julie Hoyt" <adminassist@jackson-nh.org>, fboshea@roadrunner.com, townadmin@jackson-nh.org

Bcc:

Priority: Normal

Date: Thursday October 1 2020 12:33:38PM

RE: O'Shea septic lot loading

Burke,

I will get back to you after I speak to the Chairman.

Thanks,
Julie

The Town Office Building has been closed to the public, however staff are available to transact business during normal business hours. Most transactions can be handled electronically or via phone. Please email or call and we will get back to you as quickly as possible. Thank you and stay safe!

Julie Atwell
Town Administrator
Jackson Selectmen's Office
PO Box 268 / 54 Main Street
Jackson, NH 03846
Phone: 603.383.4223 X101 / Fax: 603.383.6980
Email: townadmin@jackson-nh.org / Website: www.jackson-nh.org

From: Burke York [mailto:b.york@yorklandservices.com]
Sent: Thursday, October 1, 2020 10:44 AM
To: Julie Atwell <townadmin@jackson-nh.org>
Cc: Julie Hoyt <adminassist@jackson-nh.org>; fboshea@roadrunner.com; Burr Phillips <burr@c-solutions-llc.com>
Subject: O'Shea septic lot loading

Julie Atwell
Town of Jackson

Good morning Julie:

Included in this letter is Burr H. D. Phillips, Julie Hoyt, Bill O'Shea.

We, York Land Services, LLC, have been contracted by a landowner, Bill O'Shea, that is in a bit of a bind. The lot he purchased, Map V-4 Lot 8, on Sugar Hill Lane, came with a Town of Jackson and NHDES approved plan for a 3 bedroom septic design (see attached plan for Jones by Ammonoosuc). For various reasons, Bill was not able to install the system prior to the 4 year approval ending this past month. He had contracted the original designer to update the design and another 4 year approval, but was correctly told that the town standards have been recently increased, and the soils loading factor puts him slightly below a 3 bedroom town approval, and would meet a town 2 bedroom design requirement. A formal boundary survey and topographic survey confirmed the lot loading by slope. The NHDES standards have not changed, and actually allow for substantially more than 3 bedrooms.

Obviously a 2 versus 3 bedroom design has significant financial ramifications. We would like to attend the October 13 selectboard meeting using this letter and the attached plan as the basis for a formal request for a waiver of the current loading standard and an extension of the prior design standard. Bill is not opposed to some reasonable time restriction set forth for such an extension. A new design would be prepared and submitted as soon as possible (likely this winter).

Please let me know if the board can hear our request.

Respectfully,
Burke J. York
Burke J. York
NH PLLS 939

Hi Burke,

See the message that I sent few minutes ago stating that you would have to appeal my decision (to deny a three bedroom design) to zoning board of adjustment. Neither I or the selectmen have authority to make exception to the zoning ordinance.

I just noticed the date of the last approved plan. If the owner had built the system three weeks ago, they could build the 3-bedroom design. You might also talk with DES – though a long shot – and see if you could apply for a waiver to the expiration date of the previous approval.

Burr H. D. Phillips, PE, CPESC
Civil Solutions, LLC
603-374-1899

From: Burke York <b.york@yorklandservices.com>
Sent: Thursday, October 01, 2020 10:44 AM
To: townadmin@jackson-nh.org
Cc: Julie Hoyt <adminassist@jackson-nh.org>; fbooshea@roadrunner.com; Burr Phillips <burr@c-solutions-llc.com>
Subject: O'Shea septic lot loading

Julie Atwell
Town of Jackson

Good morning Julie:

Included in this letter is Burr H. D. Phillips, Julie Hoyt, Bill O'Shea.

We, York Land Services, LLC, have been contracted by a landowner, Bill O'Shea, that is in a bit of a bind. The lot he purchased, Map V-4 Lot 8, on Sugar Hill Lane, came with a Town of Jackson and NHDES approved plan for a 3 bedroom septic design (see attached plan for Jones by Ammonoosuc). For various reasons, Bill was not able to install the system prior to the 4 year approval ending this past month. He had contracted the original designer to update the design and another 4 year approval, but was correctly told that the town standards have been recently increased, and the soils loading factor puts him slightly below a 3 bedroom town approval, and would meet a town 2 bedroom design requirement. A formal boundary survey and topographic survey confirmed the lot loading by slope. The NHDES standards have not changed, and actually allow for substantially more than 3 bedrooms.

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Please let me know if the board can hear our request.

Respectfully,
Burke J. York
Burke J. York
NH PLLS 939

York Land Services, LLC
3 Twelfth Street
Berlin, New Hampshire 03570

Civil Solutions, LLC
INTEGRATING PEOPLE WITH THE ENVIRONMENT

MEMORANDUM

Date: March 26, 2021 Project#: 2005-005

To: Burke York, York Land Services

From: Burr Phillips, PE, CPESC

Re: W. O'Shea, Tax Map V-4, Lot 8
Town of Jackson - Septic System Design Review

√ Copy to File

√ Copy to Others: Town of Jackson, Attn: Selectmen's Office

Comments:

Civil Solutions, LLC has reviewed the above-referenced septic system design on behalf of the Town of Jackson. We regret to inform you that the plan has been denied for the following reason(s):

1. The lot size, under Section 6 of the current town zoning ordinance, will not support a 3-bedroom home (as proposed). In 2017, the zoning ordinance was updated to reflect the current SSSNNE Special Publication No. 4. Under this new publication, the lot must support 0.83 times the minimum lot size for a 4-bedroom home. Under the previous regulation, the lot size needed to be only 0.75 times the minimum lot size. Unfortunately, the lot size provides only 0.77 times the minimum lot size and no longer meets the requirements for a 3-bedroom home. Some options for attempting to regain three bedrooms might include acquiring some abutting land or acquiring lot capacity from abutting land, having a soil scientist verify the soil types, or attempting to seek an appeal from the zoning board.
2. The driveway layout does not appear to comply with the town's driveway standards due to its significant skew to the road, and being too close to the property line.

If a revised plan or supplement information is received, along with the \$55 resubmit fee, the decision will be considered again.

Should you have any questions, please call.