

**STATE OF NEW HAMPSHIRE  
TOWN OF JACKSON ZONING BOARD OF ADJUSTMENT  
(Posted November 24, 2025)**

In re: Case 2025-03 Laskin Equitable Waiver

**FINDINGS AND DECISION**

On October 24, 2025, Robert I. and Linda C. Laskin (“Applicant”) filed an application for an Equitable Waiver of Dimensional Requirements to this Board seeking a waiver from an incursion into the side setback for a structure at 12 Frances Avenue. At a Public hearing on November 19th, 2025, during which testimony was received from the Applicant’s Agent, Horizons Engineering represented by James Rines, PE, LLS, CFPS, the Board voted 4-0 to grant the Equitable Waiver. (There was no testimony from abutters and no objections from anyone present at the hearing.) Board members Benesh, Mason, Allen, and McGlynn were present.

The Board received into evidence prior to the hearing the following materials:

- October 24, 2025 Application for an Waiver of Dimensional Requirements from Section 4.3.1.2.2 of the zoning ordinance to permit the recently constructed home’s roof overhang to violate the 25 foot side setback by 1.2 feet, so that instead of the overhang being 25 feet from the northerly boundary line it will be 23.8 feet from the northern boundary line.
- October 24, 2025 Supplemental Memorandum for Robert I and Linda C. Laskin Equitable Waiver of Dimensional Requirements Application
- October 17, 2025 Appointment of Horizons Engineering, Inc as Agent for the Applicant
- October 24, 2025 “As Built” survey of the structure and parcel R18-L39 (12 Frances Avenue) showing the setbacks and the structure’s incursion thereto.
- September 8, 2023 Sewage Disposal System plan, as approved by the Town and the State
- July 27, 2023 approval by NH Department of Environmental Services of a proposed site restoration plan as part of a Wetlands Permit application.
- October 7, 2025 as built Sewage Disposal System plan that was NOT approved by the Town as the house (eave/rake) is shown encroaching the side setback.
- November 7, 2025 Additional Supplemental Memorandum providing more information on who and when the excavation was altered, when and how the

setback incursion was discovered, which town officials were notified and the substance of their discussions, and the current status of the Well Release requirement.

### **FINDINGS BY THE BOARD**

The Applicant is the owner of parcel R18-L39 (12 Frances Avenue) pursuant to a December 20th warranty deed dated December 20, 2021.

On or about June 3, 2024, Horizon's Engineering staked out the footprint of the structure to be constructed on the property. After observing the location of the house as staked, the contractor asked Horizons if the home could be shifted five feet closer to the road to move it further away from the steep bank on the river side of the structure. By eliminating the planned entry at the center of the home and driveway thumb on the road side of the structure, this shift was possible while still complying with setbacks, so no additional approval was needed or requested. Using the staked location, previously approved by Burr Phillips the contractor attempted to shift the home five feet closer toward the road, with no shift intended toward either side.

The incursion into the proscribed setback was discovered on or about August 18, 2025, by Horizons Engineering, Inc. What prompted the discovery was the fact that the septic tank location and house footprint and location were different from the approved septic system and the NHDES requires an as-built be performed when these types of changes occur. As a result of this discovery, the town could not approve the As Built sewage disposal system plan as it violated the Zoning Ordinance.

Therefore, the Board, by a vote of 4-0, found that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed AND, by a vote of 4-0, the Board found that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or

representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent

When the intrusion into the prescribed setback was discovered, the structure was substantially complete. The potential remedies included moving the house or cutting off 1.2 feet of the roof overhang on the northern side of the structure. The Applicant testified that cutting off the roof, by virtue of its unusual appearance, could depress the value of other properties in the area and could also promote water intrusion into the basement. The Applicant also testified that the fact of the 1.2 foot intrusion into the proscribed setback is imperceptible. No Abutters who were present offered testimony or documentation that the property values of other properties in the area would be adversely effected or would be a nuisance.

Therefore, following the close of the hearing ,the Board, by a vote of 4-0, found that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property. Further, the Board, by a vote of 4-0, found that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

## DISCUSSION

### **The Board's Jurisdiction**

The Board's authority to determine equitable waivers of dimensional requirements is derived from Section 19.2.4 of the Town of Jackson Zoning Ordinance (2024), the Board's By-Laws and N.H. Rev. Stat. Section 674:33 (2023) which provides in relevant part as follows:

#### **674:33-a Equitable Waiver of Dimensional Requirement. –**

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners

of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

### **DECISION**

For the foregoing reasons and the reasons expressed during the public hearing on November 19, 2025, the Equitable Waiver of Dimensional Requirements is GRANTED.

Within 30 calendar days of the date of this vote on the Decision, the Select Board or any party to the proceedings may apply for a rehearing in respect to any matter determined in the decision that is unlawful or unreasonable (RSA 677:2 and 677:3). If the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend a timely motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed. Members of the Board of Adjustment may also move for reconsideration during the same appeal period.

Frank Benesh  
Chairman,  
Jackson Zoning Board of Adjustment  
November 24, 2025