

**STATE OF NEW HAMPSHIRE  
TOWN OF JACKSON ZONING BOARD OF ADJUSTMENT  
(Posted Sept. 29, 2025)**

In re:

BLACK MOUNTAIN COMMUNITY  
CORPORATION / APPEAL OF TOWN OF  
JACKSON SELECT BOARD'S ZONING  
ORDINANCE VIOLATION ORDER  
DATED JULY 9, 2025

**FINDINGS AND DECISION**

On August 7, 2025, Black Mountain Community Corporation (“Applicant”) filed an appeal to this Board concerning the Jackson Select Board’s Zoning Ordinance Violation Order dated July 9, 2025 (“Order”). Public hearings on the Applicant’s appeal were held on September 4 and 17, 2025, during which testimony was received from the Applicant’s President, Mr. Erik Mogensen, Jackson Police Chief Christopher Perley, and Jackson Building Inspector Kevin Bennett. The Board also received into evidence during the hearing and following the hearing (with notice to the Applicant and his counsel, Christopher Meier, Esq.) the following:

- June 5, 2025 letter to the Applicant from Kevin Bennett;
- Jackson Select Board letter dated July 9, 2025 regarding sign “Ordinance Violation”;
- Police Chief Perley’s Incident Report and four photographs;
- Applicant’s appeal, together with an Addendum and three photographs;
- Text messages exchanged between Chief Perley and Mr. Mogensen; Chief Perley’s text messages with Jackson School Board Chair Jessica Dellavalle; and Chief Perley’s text message with NHDOT; and,

In addition, the Board heard presentations from Applicant's counsel, Christopher Meier, Esq.

Thereupon, upon consideration thereof made by the Board during a public deliberation, the Board has decided to REVERSE the Order's assessment of a fine against the Applicant in the amount of \$275.00, but AFFIRMED the remainder of the Order for reasons which follow.

### **FINDINGS BY THE BOARD**

The Applicant is the owner of the Black Mountain ski area located at 373 Black Mountain Road, Jackson, NH. Black Mountain has been in (non-continuous) operation as a ski for approximately 60 years. The Applicant acquired Black Mountain in or about October 2024.

In connection with the Applicant's "Red, White & Blue" celebration on July 5, 2025, the Applicant placed two adjacent signs titled "Free Lift Rides Today" and "All Ski Parking →" on the corner of the Veteran's Park triangle located in Jackson center. The Veteran's Park triangle is owned by the Town of Jackson. During the hearings, Mr. Mogenson admitted that he had not sought nor obtained advance approval to place the signs in the Veterans Park triangle from the Town of Jackson in or from the New Hampshire Department of Transportation.

According to Chief Perley's testimony, at approximately 1:00 p.m. on July 5, 2025, while on a routine patrol, he approached the intersection of Black Mountain Road and Main Street in Jackson center. As he passed by the Badger Realty's office heading towards Black Mountain Road, he saw a woman proceeding outbound on Black Mountain Road attempting to enter onto Main Street. According to Chief Perley, the woman appeared to be "struggling to look and see towards the right, to assess traffic on-coming." Also, according to Chief Perley, he positioned his

police cruiser in approximately the same position as the woman's vehicle was located after she left the intersection. Chief Perley testified that "[the woman's] vision of the roadway was blocked by two signs placed on Veteran's park (sic) property. One was a large orange diamond type sign (like a construction sign) and the other was a commercial advertisement pedestal sign." Mr. Mogensen admitted that these were the signs that the Applicant had placed in the Veteran's Park triangle.

Chief Perley also testified that after he alighted from his police cruiser to take a closer inspection of the signs, he concluded that the "sight lines were dangerously blocked. A driver would not be able to see oncoming traffic from the right, and to facilitate viewing the lane properly they would have to pull out slightly into the lane approaching from the left. Driver's (sic) approaching would also have their view blocked. The signs also caused a blind spot for any vehicles using the merge lane that exists if vehicles were traveling northbound." Chief Perley photographed the area (copies of which photographs were attached to his report) and dismantled the signs. Chief Perley confirmed with Building Inspector Kevin Bennett that Jackson has signage rules which prohibits the displaying of commercial signs on town property.

Shortly thereafter, Chief Perley texted Mr. Mogensen. Excerpts from their text message exchanges are quoted below:

- [Chief Perley to Mr. Mogensen] "Regarding your signage on RT 16A and RT 16B intersection; they're not only obstructing clear view of traffic entering the roadway, signage cannot be erected or displayed in Jackson on Town property. Further, all signage whether public or private needs to be zoning compliant. I have disassembled the signage. Please have it removed immediately from town property."
- [Chief Perley to Mr. Mogensen] "I don't think it matters how informative your sign is, it's unlawful and a road hazard."

- [Chief Perley to Mr. Mogensen] “They were unlawfully obstructing views of oncoming traffic.”
- [Mr. Mogensen to Chief Perley] “I disagree. It was some simple signage to point out to lots of out of town guests where to go. Regardless, we have moved them across the street to address your concerns about ‘obstruction of traffic.’ [over on to other Town owned property]
- [Chief Perley to Mr. Mogensen] “If they are *on Town property, they are violating zoning rules.*” (emphasis added)
- [Mr. Mogensen to Chief Perley] “Do you intend to issue a citation?”
- [Chief Perley to Mr. Mogensen] “Erik, the school has asked to have the signage removed from the property. If you don’t do it, we will have too (sic). I don’t think that is too much to ask since it’s not your property and you don’t have permission.”
- [Chief Perley to Mr. Mogensen] “As advised, we picked up your signs since you would not. They have been processed as evidence subject to the decisions of the Select Board on zoning, signage or other applicable rules or laws to include obstruction of vehicular traffic pursuant to NHRSA 644:2.”
- [Mr. Mogensen to Chief Perley] “Thanks for updating us finally. I assume then you have opened a report and investigation?”
- [Chief Perley to Mr. Mogensen] “Correct.”

According to Chief Perley, Mr. Mogensen advised him that he moved the signs “across the street” to property, which is also owned by the Town. Thereafter, Chief Perley informed Mr. Mogensen that Jessica Dellavalle, Jackson’s School Board Chair, wanted the signage removed. According to Chief Perley, Mr. Mogensen refused to do so. Thereupon, Chief Perley and Police Officer Eaton removed the signs and took them to the Jackson police station where they were processed as evidence.

## **DISCUSSION**

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

The Board's primary authority is derived from N.H. Rev. Stat. Section 674:33 (2023)

which provides in relevant part as follows:

- “I(a). The zoning board of adjustment shall have the power to: (1) hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16 . . .”
- “II. In exercising its powers under paragraph I, the zoning board of adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.”

Section 19 of the Jackson Zoning Ordinance (2024), adopted pursuant to the authority granted by N.H. Rev. Stat. 674, is Jackson's analog to Chapter 674:33. Section 19.1 of that zoning ordinance provides that: “The Board shall have the duties and powers as provided by RSA 674:33,” and Section 19.2.1 provides that the Board shall: “Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Board of Selectman or the Building Inspector in enforcement of this Ordinance.”

The Board's own by-laws provide, in relevant part, that it is the Board's “primary role”:

- “[t]interpret the terms of the Zoning Ordinance as enacted by the Town.”
- “[t]o interpret the intent of the Zoning Ordinance representing the public interest of the Town, while at the same time protecting individual property owners from unfairness and hardship in the application of zoning regulations.”
- “To act within the limits set by the Ordinance and cannot enlarge, restrict or disregard these limits. In determining the intent and meaning of a provision of the Ordinance, the Board is restricted to a fairly literal interpretation.”

- “To apply the strict letter of the law in exactly the same way that a building inspector is required to do. It cannot alter the Ordinance or waive any restrictions under the guise of interpreting the law.”
- “It should assume that the Ordinance is legal and constitutional unless declared otherwise by a court.”
- “It should act on the evidence presented and base its decision on legal grounds according to very strict guidelines outlined in state manuals and as determined by case law.”

Despite the broad mandates for zoning boards of adjustment established under New Hampshire law and Jackson’s Zoning Ordinance, the New Hampshire Supreme Court has imposed certain limitations on their jurisdiction. In *Daryl Dembiec v. Town of Holderness*, 167 N.H. 130-134, 105 A.3d 1051, 1054 (2014), the New Hampshire Supreme Court held that RSA 674:33 does not confer general equitable jurisdiction upon a zoning board except when the zoning ordinance specifically grants a zoning board with the authority to grant equitable relief. The *Dembiec* Court ruled that the Holderness Zoning Board had no authority under the municipal estoppel theory advanced by the petitioner to order the compliance officer to issue a certificate of compliance to the petitioners since their new home “indisputably” failed to comply with the ordinance. *Id.* at 134-135.

Nonetheless, the Court acknowledged that “[a] zoning board of adjustment may consider general equitable principles when exercising its discretion to grant a variance *or make some other decision within its statutory grant of authority . . .*” *Id.* (emphasis added) In another New Hampshire Supreme Court case, *Bosonetto v. Town of Richmond*, 163 N.H. 736, 744, 48 A.3d 973 (2012), at issue was whether petitioner was required to exhaust his administrative remedies before filing suit. The Court held that in cases involving only a pure question of law (where, for

example, the authority of an agency to act is at issue), if there are “substantial questions of fact, a petitioner must still typically exhaust administrative remedies” before pursuing an appeal to the Superior Court. “The rationale for this is straightforward – local zoning authorities are uniquely qualified to answer questions of fact related to matters of local concern and thus should resolve such issues in the first instance.” *Id.* citing *Huard v. Town of Pelham*, 159 N.H. 567, 573, 986 A.2d 460 (2009). In other words, the boards of adjustment are best suited to serve as the initial fact finders.

Based upon the foregoing, the Board finds that it has the jurisdiction to hear and decide the Applicant’s appeal, save for its ability, based on *Dembiec*, to rule on the constitutionality of Section 13 of Jackson’s Zoning Ordinance and on the Applicant’s defenses based on the doctrines of waiver and municipal estoppel.<sup>1</sup>

**Did the Applicant Violate Section 13 of Jackson’s Zoning Ordinance?**

Section 13 of Jackson’s Zoning Ordinance provides in relevant part as follows:

“The following provisions shall apply to the location, erection and maintenance of signs on any property within the town of Jackson.

- Section 13.1 All signs shall be located so as not to create a hazard or danger to the public.
- Section 13.3 Off-premises signs shall be limited to:

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<sup>1</sup> Although, as noted, the Board will not decide the Applicant’s waiver and municipal estoppel arguments, the Applicant bore the burden on its waiver and estoppel claim to demonstrate that: (1) a representation or concealment of material fact was made by the Town of Jackson and the Town had knowledge of that fact; (2) the Applicant was unaware of the truth of the matter; (3) the representation was made with the intention of inducing the Applicant to rely upon it; and, (4) the Applicant reasonably relied upon the representation to its detriment. *Cardinal Dev. Corp. v. Town of Winchester Zoning Aboard of Adjustment*, 157 N.H. 710, 712, 958 A.2d 996 (2008). The existence of waiver and estoppel are questions of fact. *Id.* Accordingly, based on the evidence received during the two hearings, the Board finds as a matter of fact that none of the elements needed to support the Applicant’s equitable estoppel and waiver claim were presented by the Applicant.

- Section 13.3.1 Directory type signs that may include a map and listing or businesses in the Town of Jackson. Not more than two directory type signs will be permitted. The total area of the sign, exclusive of supports, shall not exceed 64 square feet. The height of the sign shall not exceed 12 feet above the natural ground level or the center of the traveled way. The locations will be recommended by the Planning Board and *approved by the Board of Selectmen*.
- Section 13.3.2 Directional signs for local businesses will be permitted attached to town-owned Street or road signs and they shall not exceed 8 inches high by 48 inches long and must be *approved by the Board of Selectmen*.
- Section 13.3.3 Signs for ski areas and the ski touring foundation located in the Town of Jackson shall be permitted. The total area of the sign, exclusive of supports, shall not exceed 64 square feet. The height of the sign shall not exceed 12 feet above natural ground level or the center of the traveled way. The locations will be recommended by the Planning Board and *approved by the Board of Selectman.*” (emphasis added)

Based upon the evidence received by the Board during the two public hearings, the Board concludes that the signs placed by the Applicant in the Veteran’s Park triangle violated Section 13.1 of Jackson’s Zoning Ordinance. Both Exhibit 1 attached to the Applicant’s Addendum and Exhibits 1 – 3 attached to Chief Perley’s Incident Report, supplemented by Chief Perley’s testimony, show that the signs obstructed the view of traffic approaching the intersection of Black Mountain Road and Main Street. Chief Perley also testified that, based upon his *personal* observations of the signage on July 5, 2025, roadway vision was blocked by the signs. Indeed, he concluded in his report that the site lines were “dangerously blocked. A driver would not be able to see oncoming traffic from the right and . . . they would have to pull out slightly into the lane approaching from the left.”

During the hearing, Mr. Mogensen acknowledged that he moved the signs “across the street” to other Town-owned property after Chief Perley notified him in writing that the signs on

the Veterans Park triangle created an unsafe road hazard. The Applicant's Addendum acknowledges that the signs were moved "to reduce the alleged visual hazard."

Accordingly, the Board concludes that the signs initially placed in the Veteran's Park triangle violated Section 13.1 of Jackson's Zoning Ordinance. However, the Board cannot conclude, based upon the evidence received during the hearings, that when the signs were moved "across the street" (*see* Exhibit 4 of Chief Perley's report), their placement at that new location created a hazard or a danger to the public in violation of Section 13.1 of the Zoning Ordinance.

The signs placed by the Applicant in the Veteran's Park triangle and "across the street," are "off-premises signs" subject to the provisions of Section 13.3 of the Jackson Zoning Ordinance which apply to signs "on any property within the Town of Jackson." Zoning Ordinance Section 13.

The Board found that "Free Lift Rides Today" is not a "directional sign for ski areas..." (see Section 13.3.3); as such it was an off-premises sign that met none of the three exceptions to the blanket prohibition on off-premises signs.

The second sign titled "All Ski Area Parking →" appears to fit the description of "off premises directional signs for ski areas" governed by Section 13.3.3. However, as noted, that section also requires that "[t]he locations will be recommended by the Planning Board and approved by the [Select Board]." Mr. Mogensen acknowledged during the public hearings that the Applicant had not received advance approval of the sign locations from the Select Board, nor any recommendations therefor from the Planning Board.<sup>2</sup>

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<sup>2</sup> The Applicant's Addendum claims in response to the requirements of Section 13.3.3 that it was "unclear whether the Town has adopted a procedure for the recommendation or ratification of location of offpremises (sic) directional signs for ski areas." This argument appears to be a red herring since the Applicant acknowledged it never sought prior approval for either of its sign placements.

Therefore, based upon the evidence received by the Board, the signs initially placed in the Veteran's Park triangle violated Sections 13.1 and 13.3 of the Jackson Zoning Ordinance. A, when the signs were removed by the Applicant and relocated across the street, also on Town property, although they did not appear to be a hazard or a danger to the public in violation of Section 13.1, they did violate section 13.3 since both the location and the placement of the signs were not approved by the Select Board.

### **Was Proper Notice of the Violations Provided to the Applicant?**

Since the Order imposed a fine in accordance with Section 18.3.2 of the Jackson Zoning Ordinance (a violation of that ordinance "shall be punished by a fine of not more than the maximum set by state law, with each day that such violation continues to be deemed a separate offense.") However, paragraph 1 of the Applicant's Addendum argues that a fine could not be assessed by the Select Board without prior written notice to the Applicant pursuant to N.H. Rev. Stat. 676:17; since the date that the Applicant allegedly received written notice of the fine was July 9, 2025, after the signs were removed. As support for its contention, the Addendum cites the New Hampshire Supreme Court case *Town of Swanzey v. Wesley J. Liebler*, 140 N.H. 760, 763, \_\_\_\_ A.2d \_\_ (1996).

There are several notices involved here. The first one was sent by Kevin Bennett on June 4, 2025, notifying the Applicant that an electronic sign displayed by the Applicant on May 25, 2025, violated Section 13.2.2 of the Jackson Zoning Ordinance. Thus, even if the Applicant was unaware of the Jackson's sign ordinance prior to June 4, 2025, it was on notice as of June 4<sup>th</sup> – the date when Kevin Bennett notified the Applicant in writing that it was in violation of Section 13.2.2 of the Jackson Zoning Ordinance - of the sign zoning ordinances. As the Supreme Court

in the *Town of Swanzey* noted, a “defendant may not be excused for lack of knowledge of local building codes . . . .” *Id.*

Thus, the Board finds that as of June 4, 2025 (and possibly before that date), the Applicant had actual notice of the provisions of Section 13 of the Jackson Zoning Ordinance. It must also be inferred that the Applicant was aware of the enforcement and penalty provisions contained in Section 18.3 of the Jackson Zoning Ordinance which allowed the Town to impose a fine of not more than the maximum amount set by state law.

The Board is authorized to interpret the notice provisions contained in N.H. Rev. Stat. 676:171<sup>3</sup>. Thus, based upon the timeline of events described during the public hearings, the Board finds that the Applicant violated Sections 13.1 and 13.2 of the Jackson Zoning Ordinance by placing two signs on the Veteran’s Park triangle where they were observed by Chief Perley on July 5, 2025. Once Chief Perley advised the Applicant via text of the sign ordinance violations, the signs were then moved by the Applicant “across the street” where they were also located on Town property without the Select Board’s permission, in violation of Section 13.3 of the Zoning Ordinance. And, according to Chief Perley, when the Applicant was asked to remove the signs a second time, he refused to do so and they were subsequently removed by the Jackson Police Department.

However, based on the *Town of Swanzey* case, the Board concludes that notice of the violations concerning the signs located on the Veteran’s Park triangle and relocated across the

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<sup>3</sup> Any person who violates any of the provisions of this title, or any local ordinance . . . shall be subject to a civil penalty of \$275 for the first offense and \$550 for subsequent offenses for each day that such violations found to continue . . . after the date on which the violator receives written notice from the municipality that the violator is in violation . . . .”

street onto other Town property and the Select Board's assessment of a fine on July 9<sup>th</sup> did not comply with the notice requirements contained in N.H. Rev. Stat. 676:17I. In addition, although Chief Perley's text messages to Mr. Mogensen clearly alerted him that the Applicant had violated the Zoning Ordinance by placing signs on the Veteran Park's triangle and then moved across the street to other Town-owned property ("Erik, the school asked to have the signage removed from there (sic) property. If you don't do it, we will have too (sic)."). However, all of these text messages preceded the Select Board's July 9, 2025 fine assessment notice and did not satisfy the notice requirements contained in N.H. Rev. Stat. 676:17I. In the case of the signs on Veteran's Triangle, there was no prior notice. In the case of the signs across the street on other Town Property, the text message notice of the violation at Veteran's Triangle gave proper notice prior to the placement across the street. However,, the signs were removed the same day which does not satisfy the notice requirements contained in N.H. Rev. Stat. 676:17I

For the foregoing reasons and the reasons expressed during the public hearing on September 17, 2025, the Select Board's assessment of a fine against the Applicant is hereby REVERSED but the remainder of the Order is AFFIRMED.

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  
(Posted Sept. 29, 2025)