

September 29, 2025

Draft Minutes

Jackson Zoning Board of Adjustment

September 4, 2025

- Present:
 - ZBA: Frank Benesh, Dave Mason, Huntley Allen, James Wasco (zoom) and Peter McGlynn
 - Others Attendees: Applicant's President, Mr. Erik Mogenson; Applicant's counsel, Christopher Meir, Esq.; Jackson SelectBoard Chair, Barbara Campbell; Jackson Police Chief Christopher Perley; Jackson Building Inspector and Code Enforcement Officer Kevin Bennett
- At 7:30pm The Chairman opened the public hearing by questioning the board's jurisdiction over two of the five points in the appeal, specifically those concerning municipal estoppel and the Select Board's alleged violation of a state statute (RSA 676:17).
- The appellant's counsel argued that the board did have jurisdiction, as it was the required first step for an appeal before any action could be taken in Superior Court
- The core of the appellant's argument was that the \$275 fine was improperly issued because the state statute only allows for fines for each day a violation continues after the violator receives written notice. The signs were removed by the Jackson police on the same day notice was given.
- The appellant's representative argued that the enforcement was selective, citing other un-permitted temporary signs in town on the same day that did not receive fines. He also stated he complied with the initial safety concern by moving the sign.
- Chief Purley testified that the signs were an immediate and significant road hazard, obstructing the view of traffic. He stated that he provided written notice via text message. The message included that statement that the signs were in violation of the town's zoning ordinance.

- Chief Purley detailed that the appellant committed two separate violations: first, by placing the sign on town property (Veterans Park), and second, after being notified, by moving the sign to another piece of town property (the school grounds).
- Chief Purley stated that the appellant refused to remove the signs from school property even after being informed that the school board chair and superintendent wanted them removed, which necessitated police seizing the signs
- The Select Board Chair noted that the appellant had been notified of the town's sign ordinance in a letter from the building inspector dated June 5th, a month prior to the incident.
- The Chairman continued the public hearing to 7:30pm on September 17th.

September 17, 2025

- Present:
 - ZBA: Frank Benesh (FB), Dave Mason (DM) , Huntley Allen, James Wasco (JW) (via zoom).
 - Others Attendees: Applicant's counsel, Christopher Meir, Esq.; Jackson SelectBoard Chair, Barbara Campbell; Jackson Police Chief Christopher Perley; Jackson Building Inspector and Code Enforcement Officer Kevin Bennett
- The meeting was called to order at 7:05pm
- On a motion from Benesh, and second by Mason the board voted 4-0 to go into a non-public session pursuant to RSA 91-A:3-II(l).
- The Board returned to a public session at 7:15pm. On a motion from Benesh, and second by Mason the board voted 4-0 to seal the minutes of the non-public session.
- The board briefly discussed a separate, pending appeal from "McNeil," noting that the appeal currently rested on an estoppel claim, which the board believed it lacked jurisdiction to hear. The appellant's attorney was given 10 days to amend the appeal.
- A motion was passed to amend the board's bylaws to require applicants to pay for the direct costs of mail notices to abutters and newspaper advertising in addition to

the standard application fee. (*Moved by Benesh, Seconded by Wasco. Vote was 4-0.*)

- At 7:30 pm the Chair opened the continuation of the Black Mountain Appeal of an Administrative Decision. After a brief discussion, the Chairman moved to close the public hearing and proceed to deliberation.
- The Chairman then summarized the appeal: that the applicant, Black Mountain, has offered five defenses in it's appeal of the decision by the SelectBoard. The Chairman suggested addressing the facts and making findings on each one in the sequence that follows:
 - **1.) The Signs were "located so as not to create a hazard or danger to the public", and were therefore in compliance with Section 13.1 of the Jackson Zoning Ordinance (the "Ordinance").**
 - Shortly before noon on 7/5/2025 Erik Mogensen ("Morgensen") of Black Mountain placed two signs in the Veteran's Triangle (intersection of State Rt 16A and 16B in Jackson. The first sign was "Free Lift Rides Today". The second sign was a orange directional sign "All Ski Area Parking. The signs were thought to be on the property of the Town of Jackson⁽¹⁾ (*Moved by FB, Sec by DM, approved 4-0*)
 - As documented in the un rebutted testimony of Jackson Police Chief Perley and his accompanying police report, at approximately 1:00 pm Pearly observed traffic having difficulty navigating the Veteran's Triangle intersection due to dangerously impaired sign lines from the two signs. Perley dismantled the signs to remove the traffic hazard. (*Moved by FB, Sec by DM, approved 4-0*)
 - **The Board finds** that each sign was in violation of section 13.1 of the Ordinance which requires any sign not create a hazard or danger to the

¹ It was not firmly established that the signs were located on Town Property, on Town Property but within an easement to the State for the ROW, or on State owned ROW. For the purposes of the zoning ordinance, this is irrelevant. The Ordinance applies to all property in the Town of Jackson.

public given Chief the testimony of Pearly and the police report. *(Moved by FB, Sec by DM, approved 4-0)*

- **2.) The Ordinance Specifically Allows Off-Premises Directional Signs for ski areas, under Section 13.3.3.**
 - On observing the signs at Veteran’s Triangle, Perley consulted with Jackson Code Enforcement Officer Kevin Bennett who was out of town. Bennett determined that the signs were not compliant with the zoning ordinance. *(Moved by FB, Sec by JW, approved 4-0)*
 - **The Board finds** that the “Free Lift Rides Today” sign was a violation of Section 13.3 of the Zoning Ordinance which prohibits nearly all off-premises signs (with three narrow exceptions). *(Moved by FB, Sec by JW, approved 4-0)*
 - Black Mountain alleges it is unclear whether the town has adopted a procedure for the recommendation of off-premises directional signs for ski area. At the public hearing Mogensen of Black Mountain testified he made no attempt to apply to the town for approval of the directional signs. *(Moved by FB, Sec by DM, approved 4-0)*
 - **The Board finds** that the placement of the directional sign was a separate ordinance violation of Section 13.3.3 of the Zoning Ordinance which allows an off-premise directional sign for ski areas at a location when “recommended by the Planning Board and approved by the Board of Selectmen”. Though there are no formal application forms to complete for the Planning Board action, the Board finds that even a simple phone call or email to the planning board would have very likely resulted in an agenda item at the next Planning Board meeting. *(Moved by FB, Sec by DM, approved 4-0)*.
- **3.) Non compliance with RSA 676:17 for failure to give written notice in advance of a fine**
 - Subsequent to dismantling of the signs and consultation with Bennett, Pearly sent the following text message to Mogensen at about 1:33 pm: *"Regarding*

your signage on Rt. 16A and Rt. 16B intersection; they are 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.” (Moved by FB, Sec by JW, approved 4-0).

- **The Board finds** that a June 5th written notice by Bennett of a violation by Black Mountain of Section 13.2.2 of the Ordinance which prohibits “*neon lighted or flashing lights*” with regard to on-premises signs provided some notice of the existing restrictions and limitations on signs in Ordinance. However, the Board finds it was too narrowly written to provide reasonable notice of the separate section of the ordinance which prohibits **off-premises signs** to Black Mountain. (See *Town of Swanzey v. Liebler* We hold that it can not. While we agree that the defendant may not be excused for lack of knowledge of local building codes, he may not be fined with civil penalties under RSA 676:17 unless given reasonable “written notice” that he is in fact in violation of a town ordinance.) (Moved by FB, Sec by JW, approved 4-0).
- As the two violations created by the two signs ceased when Pearly dismantled the signs and before he sent the text message advising that the signs were not zoning compliant, **the Board finds** that in regards to the initial signs at the Memorial Triangle the Selectmen’s assessment of a \$275 find in a July 9th letter is not in compliance with NH RSA 676:17 which allows for a civil penalty for “*each day such violation is found to continueafter the date on which the violator receives written notice from the municipality that violator is in violation*” as the notice was given after the violations ceased. (Moved by FB, Sec by JW, approved 4-0).
- Mogenson and Perley subsequently exchanged multiple texts about the dismantled signs, followed by a later statement that Morgenson had moved

- the signs. Pearly reiterated in another text that *“if they are on town property they are violating zoning rules.”* ⁽²⁾ (Moved by FB, Sec by DM, approved 4-0).
- Mogenson re-assembled the two signs on what is believed to be the property of the Jackson School District. (Moved by FB, Sec by DM, approved 4-0).
 - Pearly, after confirming that the signs had been re-assembled on school district property and after being advised by the school board that they wanted the signs removed, advised Mogenson that the school board asked to have the signs removed. Pearly stated that if Mogenson did not remove the signs, Perley would do so. (Moved by FB, Sec by DM, approved 4-0).
 - At approximately 3:00 or 4:00pm Pearly and Jackson police officer Eaton removed the signs. (Moved by FB, Sec by DM, approved 4-0).
 - **The Board finds** that the placement of the “Free Lift Rides Today” on school board property was a subsequent and distinct violation of Section 13.3 of the Zoning Ordinance which prohibits nearly all off-premises signs (with three narrow exceptions). Whether or not permission was granted by the property owner (in this case the school board) is not relevant to the zoning violation. (Moved by FB, Sec by DM, approved 4-0).
 - **The Board finds** that the placement of the directional sign on school board property was also a subsequent and distinct violation of Section 13.3.3 of the Zoning Ordinance which allows an off-premise directional sign for ski areas at a location *“recommended by the Planning Board and approved by the Board of Selectmen”* (Moved by FB, Sec by DM, approved 4-0).
 - **The Board finds** that the written text message to Mogenson at about 1:30pm stating *“Further, all signage whether public or private needs to be zoning compliant”* gave Morgenson adequate notice that off-premise signs were generally not permitted by the zoning ordinance. The Board finds that Mogenson willfully created two violations of the ordinance by reassembling

² While not fatal in this context, in fact the Ordinance prohibits off-premise signs anywhere in Jackson, whether on public property or private property with

- the the two signs on a different site. These two violations were both second violations that occurred after receiving written notice from Perley. *(Moved by FB, Sec by DM, approved 4-0).*
- **The Board finds** that the Selectboard's \$275 fine assessed in the letter of July 9th does not comply with RSA 676:17 as the signs on the School Board property were removed on the same day by the Police Chief and thus the violation did not extend to the day after receiving notice of the violation.. *(Moved by FB, Sec by DM, approved 4-0).*
 - **4.) The Ordinance does not apply to temporary signs**
 - **The Board finds** that there is no distinction between temporary and permanent signs in the Ordinance. *(Moved by FB, Sec by JW, approved 4-0).*
 - **5.) The The SelectBoard's Application of the Ordinance is Inconsistent.**
 - Black Mountain asserts the Town allows other businesses to place temporary off-premises signs without receiving a violation notice, or asserting the need to go through a planning board and board of selectmen review for a temporary sign. Black Mountain offers as proof a sign posted on the same weekend by an Art Gallery on the triangle at the intersection of State Route 16 and Route 16A adjacent to the covered bridge and which neither received a violation notice or the assertion that the sign had to go for the planning board and the Select Board for approval. This was an off premise sign posted on NH DOT owned land. Black Mountain further asserts the Town is bound by its own prior interpretation of Section 13 of the Zoning Ordinance, under the doctrine of municipal gloss and/or estoppel and/or the equal protection provisions of the New Hampshire and United States Constitutions. *(Moved by FB, Sec by JW, approved 4-0).*
 - Chief Perley testified that having received notice of the sign from Black Mountain, he contacted the owner of the Gallery who subsequently removed the sign. Though not relevant, Perley subsequently determined that the DOT would not have approved any sign on the triangle for traffic and safety reasons. *(Moved by FB, Sec by JW, approved 4-0).*

- **The Board finds that**
 - This Art Gallery sign was a violation of Section 13.3 of the Zoning Ordinance which prohibits nearly all off-premises signs (with three narrow exceptions). *(Moved by FB, Sec by JW, approved 4-0).*
 - It does not require planning or select board approval as it is not an directional sign for a ski area which is one of the narrow exceptions to the general prohibition on off-premises signs. *(Moved by FB, Sec by JW, approved 4-0).*
 - It is not disparate enforcement, as after being contacted by the town (Perley), the Art Gallery removed the sign. Likewise, Black Mountain was prepared to remove the sign from the Veteran's Triangle (if not already dismantled by Perley as an immediate traffic hazard). *(Moved by FB, Sec by JW, approved 4-0).*
 - Moreover, Black Mountain is NOT being treated differently because, unlike the Art Gallery, Black Mountain reassembled the offending signs in a second place after receiving notice that the off-premises signs violated the Ordinance. *(Moved by FB, Sec by JW, approved 4-0).*
 - Further, with regard to selective enforcement, the appellant must show more than that the enforcement of the ordinance was historically lax and must instead show that the selective enforcement of the ordinance against him was a consciously intentional discrimination. *(Andrews vs Kearsage Lighting District.)*. In addition, the applicant did not provide details of the elements to prove estoppel. *(Moved by FB, Sec by JW, approved 4-0).*

DECISION

- **Deny** the appeal and affirm the SelectBoard with regard to the assertion that the ordinance allows temporary signs.
- **Deny** the appeal and affirm the SelectBoard with regard to the assertion that the signs on the Vertern's Triangle were NOT a traffic hazard

- **Deny** the appeal and affirm the SelectBoard with regard to the assertion that the off-premise ski area signs are permitted without prior Planning & Selectboard reviews & decisions.
- **Deny** the appeal and affirm the SelectBoard the unstated assertion that the off premises “Free Lift Rides” sign was permitted.
- **Recuse** from any decision on the assertion of Selective Enforcement and estoppel for lack of jurisdiction. (see Dembiec)
- **Affirm** the appeal and reverse the SelectBoard with regard to lack of notice as required by RSA 676:17, and void the fine in the Violation Letter of July 9th, 2025.

(Decision moved by FB, Sec by DM, approved 4-0).