

**MADISON ZONING BOARD**  
**Approved Minutes**  
**December 21, 2016**

**CALL TO ORDER:** Mr. Lucy, Chair, called the meeting to order at 6pm.

**PLEDGE OF ALLEGIANCE:** Mr. Hughes led those assembled in the Pledge of Allegiance.

**ATTENDANCE:** Mrs. King called the roll.

Mark Lucy, Chair – Present

Stuart Lord, Vice-Chair – Present

Hershel Sosnoff – Excused

Henry Anderson – Present

Ken Hughes – Present

Mark Totman, Alternate – Excused

Kevin O’Neil, Alternate – Present

**Staff Present:** Colleen King- Land Use Administrator,

Others Present: Tony Fallon, Marshall Schermerhorn, Ronald Briggs, Steven and Virginia Mitchell

**POSTING DATES & LOCATIONS:** 12/7/16 at Madison Town Hall Upper and Lower Level, Madison Post Office, and Silver Lake Post Office, Conway Daily Sun (1/9/16)

**POLLING FOR CONFLICT OF INTEREST/SEATING OF ALTERNATES**

Mrs. King read Case # 16-06 into the record and Mr. Lucy polled each Board Member for any conflicts of interest with this case. Hearing none, Mr. Lucy elevated Mr. O’Neil to a full voting member for this case and a full Board will hear Case # 16-06.

**REVIEW OF WAIVER REQUESTS**

No waiver requests were submitted for this case.

**REVIEW OF REGIONAL IMPACT**

Mr. Lucy polled for Board on whether this case had a regional impact. All five members voted that there was no regional impact for this case.

**RULES OF PROCEDURE**

Mr. Lucy reviewed the Rules of Procedure and confirmed that the applicant/agent of Case# 16-06 had been given an explanation of these Rules. Mr. Fallon was sworn in by Mr. Lucy.

**ZBA CASE # 16-06**

413 West Shore Drive, Tax Map 134, Lot 10, Rural Residential Zone

Mr. Tony Fallon, Agent for Marshall and Ann Schermerhorn, is requesting a variance pursuant to Madison Zoning Ordinance Article 1, Section 1.3B, to permit the raising of the roof of an existing second floor to allow for legal egress windows required for emergency escape.

Mr. Lucy asked Mr. Fallon to state their appeal. Mr. Fallon explained that the owner's existing home has 3 bedrooms on the second floor and the number of bedrooms will not change. The current roof height of 23' has a shallow roof pitch and with 1 1/2 stories. A variance is requested to raise the roof to 31' above average grade to allow for emergency egress on the lake side. Their request to raise the roof to 31' will still be under the Town limit of 36'. Mr. Fallon presented a colored drawing of the proposal to the Board.

Mr. Lord questioned the expansion of the dormers. Mr. Fallon stated that the existing 3 windows are 2'x3' and are too small for emergency egress and is proposed to be a 4 window dormer, on the water side. On the road side, the 2 window dormer is proposed to be a 3 window dormer.

Mr. O'Neil inquired about whether the pitch of the roof would need to be raised.  
Mr. Lucy asked if there were any existing and proposed elevation views, with graphics side by side. Mr. Fallon showed existing doghouse style dormers and proposed lakeside dormers from his laptop.  
Mr. Lucy asked if the proposal will remain in the same footprint. Mr. Fallon agreed.  
Mr. Anderson asked about the total height being less than 36' and Mr. Fallon confirmed the height proposal is 31'.

#### **PUBLIC COMMENT**

Mr. Lucy opened the hearing for anyone to speak in opposition to or in favor of this appeal. Hearing none, Mr. Lucy closed the public portion of this hearing.

#### **BOARD DELIBERATION**

Mr. Anderson stated that the structure's original height of 23' was within regulations at that time and the proposal to 31' will also conform. He did not think that this proposal is outside the zoning allowance and a variance is not needed. The only reason why this building is non-conforming is because it is too close to the lake.  
Mr. Lucy stated that this structure predated zoning here in Madison. He cited the 50% rule for the outward expansion but there is no allowance for the expansion in height. The zoning ordinance could be worded better.  
Mr. Anderson stated the fact that the structure was within the scope of the 36' height limitation. All agreed.  
Mr. O'Neil stated that there appears to be two ordinances in conflict with each other, in this particular case.  
Mr. O'Neil and Mr. Lucy stated that the reason given by the applicant was misplaced and that aside questioned the Board about the reasonableness of the request.  
Mr. Lucy read the first sentence of the Zoning Ordinance which states promoting public safety is important and asked if it is necessary to raise the roof 8'. Mr. Lucy would like to see elevation views and cross-sections showing the existing floor elevation and the proposed height increase.  
Mr. Lord stated that what should be addressed is what is the minimum allowed for egress.  
Mr. O'Neill suggested that the applicant could submit new drawings with elevations at another hearing.  
Mr. Lucy offered to continue this hearing to meeting in the near future so the applicant could present elevation drawings showing the increase of the 2nd floor elevation. Mr. Fallon agreed.

#### **MOTION**

Mr. Lucy moved that Case # 16-06 be continued to the next public hearing that meets the applicant's schedule. Mr. Lord seconded.

#### **DISCUSSION**

Mr. Lord stated that the drawings need to show the cross-sections, with existing and proposed elevations of the 1st and 2nd floors.  
Mr. O'Neil concurred.

#### **VOTE ON THE MOTION**

All in favor; motion passed, 5-0. Mr. Lucy instructed the applicant to contact Mrs. King when they have drawing and additional information.

### **POLLING FOR CONFLICT OF INTEREST/SEATING OF ALTERNATES**

Mrs. King read Case # 16-07 into the record and Mr. Lucy polled each Board Member for any conflicts of interest with this case. Hearing none, Mr. O'Neil remained a full member for this case and a full Board will hear Case # 16-07.

### **REVIEW OF WAIVER REQUESTS**

No waiver requests were submitted with this application.

### **REVIEW OF REGIONAL IMPACT**

Mr. Lucy polled for Board on whether this case had a regional impact. All five members voted that there was no regional impact for this case.

### **RULES OF PROCEDURE**

Mr. Lucy confirmed the Rules of Procedure with the applicant/agent of Case# 16-07. Mr. Ronald Briggs and Mr. Steven Mitchell were sworn in by Mr. Lucy.

### **ZBA CASE #16-07**

Property located on Boulder Road, Tax Map 111, Lot 43, Rural Residential Zone. Mr. Ronald Briggs, Agent for Steven and Virginia Mitchell request a variance pursuant to Madison Zoning Ordinance, Article 4, Section 5.C to permit the construction of a building and driveway, parts of which are within 50' of a poorly drained soil and within 75' of very poorly drained soil.

Mr. Lucy asked Mr. Briggs to present his application. Mr. Briggs stated that the wetlands on the property have been delineated by a licensed soil scientist and the report was submitted with the application and has been a vacant lot and conveyed in 1964. A round house is proposed with the sideline setbacks and center-line road setbacks being met. The proposal does not meet the setbacks to the wetlands buffer. There is an existing driveway apron which the State of NH constructed when the bridge was rebuilt. Prior to obtaining a building permit, a driveway permit will be sought from the State to relocate to driveway as shown on plan. The closest point of the building to the buffer of poorly drained soils is 35.5' and 44.2' to the buffer of the very poorly drained soils. In the upper right-hand corner of the plan is a summary of the square footage of the building and how much is encroaching on the buffer.

Mr. Lord asked about the basement and location of the septic system. Mr. Briggs stated that there will be no basement or septic system. The plans call for a composting toilet, with no running water in the house. Mr. Lord asked for clarification of the location of the house in reference to the big red pine tree. The red pine will not be touched. Mr. O'Neil asked about the possibility of moving the building away from the wetlands. Mr. Briggs stated that then a variance would be needed for lot line or center of the road setbacks. Mr. Mitchell stated that if the house were moved further away from the poorly drained soils, he would have to cut down the big red pine, which he doesn't want to do. The circumference of the tree is 10.5'. Mr. O'Neil agreed with this. Mr. Lucy read Zoning Ordinance Article 1.3A, "... undeveloped, nonconforming lots may be developed with any use permissible in the zoning district, without compliance, with minimum lot size, frontage or dimensional requirements, so long as any sufficient off-street parking for any such proposed use is provided within the property boundaries."

This is exactly what the ordinance was drafted for.

### **PUBLIC COMMENT**

Mr. Lucy opened the hearing for anyone to speak in opposition to or in favor of this appeal. Mr. Steven Mitchell, owner, stated that their goal is to have the small impact on the land and the driveway on the land was there when they purchased the lot. There was no opposition.

## **SUMMARY OF FACTS**

Mr. Lucy reviewed the following facts:

- The property is map 111, lot 43, fronts on Boulder Road, with .41 ac.
- The lot is partially covered by poorly drained and very poorly drained soils.
- The applicant is looking for buffer relief of 35' from the 50' setback of poorly drained soil and 44' from the 75' setback of very poorly drained soil.
- The proposed structure meets the side and road setbacks.
- The parcel was created in 1964 and predates Madison Zoning.
- The proposal is within the wetland buffer, but not the wetlands themselves.
- Zoning Article 1.3A does allow this type of use on this lot.
- DES does not need to approve a composting toilet.
- There is a summary on the upper right portion of the drawings.
- The proposed structure placement avoids removal of specimen trees.
- There is no other place to put the house and still conform to Zoning.

Mr. Lucy concluded the Summary of Facts.

Mr. Lucy moved to close the public portion of this hearing; Mr. O'Neil seconded. All in favor.

Mr. Lucy asked Mr. Lord to chair the remainder of the hearing.

## **BOARD DELIBERATION**

Mr. Lord stated that all facts are recorded and there was no further discussion by the Board.

## **MOTION/VOTE**

Mr. O'Neil made a Motion to approve the variance to construct a building on property located on Boulder Road, Map 111, Lot 43, parts of which are within 50' of a poorly drained soil and within 75' of very poorly drained soil, per plan submitted. Mr. Hughes seconded.

All in favor; Motion passed 4-0.

Mr. Lord reviewed the 30 day appeal period and reminded all parties involved to not discuss the case until the appeal period has expired.

## **OTHER BUSINESS**

### **APPROVAL OF NOVEMBER 16, 2016 MINUTES:**

Draft Minutes were reviewed and edits made. Mr. Lord made a motion approved the minutes as amended; seconded by Mr. Hughes. All in favor; Mr. Lucy abstained. Motion passed 3-0-1.

## **COMMUNICATIONS**

2017 ZBA Submission and Meeting Schedule was distributed to the Board, and is posted on the Town webpage.

There was a general discussion of Court updates.

Mr. Lord and Mrs. King will review ZBA documents and applications for function, form and a quality control process.-

Mrs. King will follow-up on the most current Zoning Ordinance and distribute as necessary.

## **ADJOURNMENT OF PUBLIC HEARING**

Mr. Lord made a motion to adjourn; Mr. Anderson seconded.

All in favor; meeting adjourned at 7:33 pm

Respectfully Submitted,  
Colleen King

*These minutes were approved at the March 15, 2017 meeting.*