

**Zoning Board of Adjustment  
Town of Madison  
PO Box 248  
Madison, NH 03849**

**Minutes  
October 19, 2011**

Members Present: Henry Anderson, Jay Bisio, Peter Craugh, Ken Hughes, Mark Lucy, and Kevin O'Neil

Members not Present: Hersh Sosnoff

Staff Present: Bob Babine – Code Enforcement Officer and Wendy Huff – Administrative Assistant

Others Present: Donna Lane, Jenelle Lane, Robert Sanberg, Courtney Croteau

Meeting Agenda Posted: 10/05/11 at Madison Town Hall, Madison Post Office, Silver Lake Post Office

1. **CALL TO ORDER:** Mr. Lucy called the meeting to order at 7:05 P.M.

2. **ROLL CALL:** Mrs. Huff called the roll.

3. **NEW HEARINGS:**

**Case 11-05:** Lane Realty Trust, Donna K Lane Trustee, Ragged Cove Lane, Tax Map 107 Lot 55, Rural Residential District, requiring Variances from Section 5.9A & 5.9C of the Zoning Ordinance. Applicant proposes placement of a house within road centerline setback and water setback.

Notice was made in the Daily Sun on 10/11/11 and posted at both post offices and the town hall on 10/05/11. Abutters were notified by certified mail on 10/05/11. All return receipts have been returned except Corsetto and all fees have been paid. There were no Board conflicts of interest. There are no waiver requests and the application was not considered to be of regional impact. Mr. Lucy explained the hearing procedures and swore in all those who would be speaking to the application.

The public hearing was opened at 7:09 P.M. Ms Lane explained that she bought Lot 55, which is adjacent to her current dwelling lot, approximately ten years ago. At that time the lake setback was 50' and she was led to believe that the road centerline setback was 65.' Since then the lake setback changed to 75' and she learned that the road centerline setback is 75.' Ms. Lane stated that she cannot place a house on the property without variances. She noted that Lot 55 is similar to other properties in the neighborhood, a number of neighboring dwellings are within the lake setback, and her proposed house location will not block the lake view for abutters. She will construct the dwelling using erosion control measures. She noted that she has a Shoreland Exemption due to vested rights. There was a question whether Ragged Cove Road was a private road; Ms. Lane indicated that the property owner association pays for the upkeep and plowing of the road. Mr. Lucy noted that any permits to build on a private road are not germane to the variance appeals. It was noted that although Lot 55 is not in Eidelweiss, the neighborhood is comprised of lots similar in nature to those in Eidelweiss.

Mr. Craugh suggested that the proposed structure could be moved closer to the road, negating the need for a lake setback. Ms. Lane explained that her Shoreland

Exemption and approved septic design is based on the location presented and that any changes would require re-submittal to those boards. Mr. Lucy noted that the certified plot plan was prepared by White Mountain Survey Company but that he was not involved in the survey design. There was further discussion relative to changing the proposed location; it was noted that the variance appeals are for the location as shown on the certified plan. Ms. Lane reiterated that she has renewed the septic and Shoreland permits originally issued based on the proposed location and any changes would require new submissions. There was no one present in opposition to the appeal.

Summary of Facts: The .13 acre lot is Tax Map 107 Lot 55. The applicant is requesting a 25' lake setback variance and a 10' road centerline setback variance. The proposed dwelling location is in keeping with the neighborhood. Ragged Cove Road appears to be a private road owned by Big Pea Porridge Road Association. The legal building envelope is a very small triangle of approximately 50 square feet. The applicant has a Shoreland Permit exemption and an approved DES septic plan; changing the footprint location would result in the loss of the grandfathered exemption and septic approval. There was brief discussion of the dates of the plans, but Mr. Lucy felt the testimony of the applicant was sufficient evidence. There being no further questions from the board or public, the hearing was closed at 7:40 P.M.

Deliberation on the Variance Criteria: The Board was in general agreement that the proposed plan was reasonable. Mr. Craugh again expressed his opinion that the location of the dwelling should be moved towards the road. The Board reviewed the variance criteria:

- The spirit of the ordinance will be observed by allowing variances for a sub-standard lot.
- Substantial justice is done by making a sub-standard lot usable.
- Surrounding property values will be enhanced.
- Because the building envelope is so small, the only way to use the lot is with the approval of variances.

Vote: Mr. Bisio moved, seconded by Mr. Anderson, to grant the variances as requested. Motion passed unanimously. Mr. Lucy read the rules of appeal.

#### **4. CONTINUED HEARINGS: none**

#### **5. OTHER BUSINESS & COMMUNICATIONS:**

Ms. Huff explained that zoning case files, some of which contain audio cassettes, will be incorporated into the property record file. Since audio recordings and meeting notes are only kept until the appeal period has expired, the Selectmen's Office is requesting an approval for disposal of the audio cassettes. Mr. Lucy moved, seconded by Mr. Hughes, to destroy the obsolete audio cassettes. Mr. Craugh requested and received clarification that this motion applies to audio cassettes only. Motion passed unanimously.

Mr. Lucy reminded the Board that when a member recuses himself, he should sit in the audience and not join in any discussion once recused.

A news article relative to some members of the Stoddard Zoning Board resigning and causing a legal appeal due to the lack of a quorum was briefly reviewed.

Site Visit Policy: Mr. Lucy reviewed the events of last month's site visit issue in detail, explaining that it was precipitated by an applicant making an unsubstantiated and unwarranted accusation following a site visit by a ZBA member. Subsequently, in an effort to avoid further accusations until the matter could be discussed, other board

members were requested by Ms. Huff to view the site from the road. He stressed that this incident was an aberration, that there had been no change in the site visit policy, and that, in fact, any policy change requires discussion at two meetings and a vote of the Board. Advice from Bernie Waugh, ZBA Counsel was sought, and his written comments were reviewed. It was noted that applicant denial of pre-hearing individual site visits or a full board site visit could be reasons for appeal denial. Mr. Lucy noted that discussion of any appeal between board members or with the applicant should not take place except at a publicly noticed meeting. After general discussion the Board agreed: (1) to make the site visit permission a separate signature line on the application; (2) to create a separate approval signature line on the application to allow photographs to be taken by board members; (3) to add language in the application procedure to encourage the applicant's submission of photographs to support the appeal requests; (4) to have Mr. Lucy and Ms. Huff discuss the possibility with the Board of Selectmen for issuance of photo ID cards to board members; (5) to include a 3' length of surveyor tape in the application packet for marking the property for easier identification for board members; and (6) to add a section relative to site visits in the Rules of Procedure. Ms. Huff will provide drafts of the changes to the Application and Rules of Procedure for approval at the next meeting.

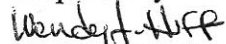
Mr. Anderson asked about progress on the sound abatement at the gun club. Mr. Babine explained that finances are an issue, but that the work will be done as soon as the Club is able.

Mr. Lucy reported that interviews for the Administrator position are underway by the three board chairs.

**6. APPROVAL OF MINUTES:** Mr. Craugh moved, seconded by Mr. Hughes, to approve the minutes of September 22, 2011 as corrected. Motion passed.

**7. ADJOURNMENT:** Mr. Lucy moved, seconded by Mr. Craugh, to adjourn the meeting at 8:45 P.M.

Respectfully submitted,

  
Wendy J. Huff

Administrative Assistant

Minutes Approved: November 16, 2011

Corrections: none