



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA DRAFT MINUTES
MARCH 6, 2018**

CALL TO ORDER

Vice Chair Lord called this meeting to order in the Town Hall meeting room at 6:00pm. He explained that this is a special meeting to consider a re-hearing request for Case # 17-06.

PLEDGE OF ALLEGIANCE

Mr. Hughes led those in attendance in the Pledge of Allegiance.

ATTENDANCE

Mrs. King called the roll:

Mark Lucy, Chair – Excused.

Stuart Lord, Vice-Chair - Present.

Ken Hughes - Present.

Henry Anderson - Present

Mark Totman - Present.

Melissa Arias, Alternate - Excused/Recused

Bebe Bartlett, Alternate - Excused

Kevin O'Neil, Alternate - Excused

OTHERS PRESENT

Colleen King - Land Use Administrator, Amy Boyd - Madison TV,
Attorney Peter Malia, Steve Larson.

APPROVAL OF JANUARY 17, 2018 MINUTES

The Draft Minutes were reviewed and edits made.

Mr. Anderson made a **Motion** to approve the minutes as amended; seconded by Mr. Hughes.

No discussion; All Approved.

RE-HEARING REQUEST FOR CASE # 17-06

Attorney Christopher Meier, agent for applicants R. Kevin, Christopher and Kelly E. Connolly 585 East Shore Drive, Tax Map 135/ Lot 7, has requested a Re-Hearing for Case # 17-06 for an Appeal of an Administrative Decision pursuant to Madison Zoning Ordinance 1.3B and relating to a Building Permit issued on property owned by Mark and Teresa Richey and located at 599 East Shore Drive, Tax Map 135/ Lot 8.

HEARING NOTICE

Mr. Lord stated that a Request for a Rehearing of Case #1706 was filed by Atty Meier on behalf of the Connollys. Mrs. King read the Request and stated that this is a meeting opened to the public and not a hearing; therefore, it was posted at Madison and Silver Lake Post Offices and the upper and lower levels of Town Hall. Four of the five Board members present for this public meeting, were also present for the previous meeting, covering Case #17-06.

RULES OF PROCEDURE

Mr. Lord reviewed the Rules for a Rehearing Request from the Board of Adjustment Handbook and all members received a copy.

Mr. Lord stated that there are 2 questions that need to be answered at this meeting:

- 1) Will justice be served by holding a rehearing?
- 2) Did the Board make a mistake?

The Re-hearing process is designed to allow Land Use Boards the opportunity to review their decision and if necessary, correct any mistake before an Appeal is filed in Court.

BOARD DELIBERATION

Mr. Lord reviewed the Motion for Re-Hearing, as presented in the document provided by Atty Meier. The Board deliberated as follows:

- I.** The proposal is an unlawful expansion of non-conforming structure.
 - A.** Mr. Lord stated that Atty Meier quoted the Zoning Ordinance incorrectly, in that the structure of the paragraphs and the sentences of Zoning Ordinance 1.3B is not how Atty Meier presented it in his motion. The layout of Zoning Ordinance 1.3B was an important consideration in the Board's decision process and as such, there was no interpretation error made by the Board.
 - B.** Mr. Anderson did not believe that the 2009 Variance had anything to do with this current request and has no relevance. This is a totally different request. This proposed new house will be further away from the lake and will be less non-conforming; the side lot lines will also be conforming. The Richey's proposal does not need the height relief, which was granted in the 2009 Variance. The height in the current proposal is within the buildable area. The only height limitation now is the 36' zoning limitation.
 - C.** Mr. Totman stated that the height of the garage is in a conforming portion of the lot. After reviewing the Approved January 17, 2018 minutes, Mr. Totman confirmed that the design of the house has a height that is below what is allowed by Zoning and is set further back from the lake.
 - D.** Mr. Lord stated that the proposed elevation of the house is higher than the current structure, so the Richey's would need to use the 2009 Variance that addresses the height requirement.
 - E.** Mr. Anderson pointed out that the 2009 Variance does not pertain to this case, as it was not acted upon within 2 years of being granted. The Board was not aware of this time limitation until tonight.
 - F.** Mr. Lord asked if the building permit needed the 2009 Variance for the basis of its issuance.
 - G.** Mr. Anderson stated that because they were tearing down an existing structure and rebuilding a new one, they would have to use the existing footprint. However, the proposed footprint will be reduced and will be less non-conforming. The elevation is allowed at 36' within the setbacks.

- H.** Mr. Hughes believed that they are relying on the 2009 Variance for the height elevation, even though the proposed structure is below the 2009 Variance. Also, the RSA cited by Atty Meier needs to be considered as the Variance was not acted upon within 2 years.
 - I.** Totman confirmed that today, a resident would be allowed to raise their roofline as long as it was under 36'. There is no part of this proposed structure that is above 36' elevation limitation.
 - J.** Mr. Anderson explained that Section 1.3B allows for expansion of 50%, which usually means sideways expansion, not height. He stated that no new information has been given and the re-hearing should not be granted.
 - K.** Mr. Lord stated that when the Richey's presented their case, they referenced the 2009 Variance and in the Board discussion, the 2009 Variance was discussed. In the January 17, 2018 minutes, Mr. Lucy confirmed with Atty Malia that they were relying on the 2009 Variance. Mr. Lord stated that this fact may have been the basis for their decision, even though it may not have been the correct basis.
- II.** RSA 674:33.1-A states that, effective in 2013, variances must be acted upon within for 2 years.
- A.** Mr. Lord stated that this may be a technical error as the Board based their decision on a Variance which had expired. This was stated in the January 17, 2018 minutes and therefore, a re-hearing should be granted. The rationale behind the Board's decision was incorrect.
 - B.** Mr. Hughes agreed.
 - C.** Mr. Anderson agreed and stated that the 2009 Variance needs to be ignored entirely. There is now new information which meets the criteria for a rehearing.
 - D.** Mr. Lord reviewed the RSA 674:33.1-A, and stated that there is nothing in the Madison Zoning Ordinance that extends the life of a variance, if it is not acted upon within 2 years.
- III.** The proposed driveway violates that Ordinance.
- A.** Mr. Lord stated that in the December 20, 2017 minutes, the applicant will be amending their driveway plans to comply with the Ordinance.
- IV.** The ZBA Chair should have been disqualified from this matter.
- A.** Mr. Anderson and Mr. Totman did not agree.
 - B.** Mr. Lord also disagreed, stating that this matter was discussed and he did not believe that the Chair had a conflict of interest. The Chair was not at all biased and there was no conflict.
 - C.** Mr. Hughes sat on the 2009 Variance case and stated that in the 2009 minutes, Mr. Connolly asked a question about how the expansion was measured. To answer Mr. Connolly's question, the Chair read the Zoning Ordinance which explained the 50% expansion rule. Mr. Hughes did not agree that the Mr. Lucy should have recused himself.

SUMMARY

Mr. Lord summarized the deliberation: Based on the 2 set of minutes, the Board decision was based on the need for the 2009 Variance which they now know has expired. For that reason alone, he is inclined to grant the re-hearing request. At best case, it could be argued that the 2009 Variance was good up until September 2015, because the law went into effect in 2013.

MOTION

Mr. Lord made a **MOTION** to grant the re-hearing request; Mr. Anderson seconded. No discussion. All Approved. The re-hearing date will be confirmed within a week.

ADJOURNMENT

Mr. Totman made a **MOTION** to adjourn; Mr. Hughes seconded. All Approved. Meeting adjourned at 7:06pm

Respectfully submitted,
Colleen King
Land Use Administrator

DRAFT