



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA APPROVED MINUTES
MAY 16, 2018**

CALL TO ORDER: Vice-Chair Lord called the meeting to order in the Town Hall meeting room at 6:00pm.

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

ATTENDANCE: Mrs. King called the roll:

Mark Lucy, Chair - Excused/Recused. Melissa Arias, Alternate - Excused/Recused
Stuart Lord, Vice-Chair - Present. Bebe Bartlett, Alternate - Present
Ken Hughes - Present. Kevin O'Neil, Alternate - Excused
Henry Anderson - Present
Mark Totman - Present.

OTHERS PRESENT: Colleen King - Land Use Administrator, Amy Boyd - Madison TV, Bob Boyd - Madison Code Enforcement Officer, Attorney Christopher Meier, Attorney Peter Malia, Mark Richey, Stephen Larson.

APPROVAL OF MARCH 6, 2018 MINUTES: The draft minutes were reviewed and edits made. Mr. Hughes made a Motion to approve the minutes as written; seconded by Mr. Anderson. Mr. Totman abstained. All others approved.

ZBA CASE 17-06R (Con't from April 18, 2018)

Attorney Christopher Meier, agent for applicants R. Kevin, Christopher, and Kelly E. Connolly, 585 East Shore Drive, Tax Map 135/ Lot 7, for an Appeal of an Administrative Decision pursuant to the 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 / CONFLICT OF INTEREST

Mr. Lord explained that this is a re-hearing of Case 17-06R, which was continued from April 18, 2018 when the Board opened the case. The Application with the posting dates and locations were announced on that date.

Board members Lord, Anderson and Hughes individually stated that they have no conflict of interest with this case. Mr. Totman was not present at the April 18 hearing but heard the original case in

December 2017, and stated that he has no conflict of interest. Ms. Bartlett moved up from alternate to a full member for this case, replacing Mr. Lucy and stated that she has no conflict of interest. A full Board was present to hear this Appeal.

WAIVER REQUEST/ REGIONAL IMPACT/ RULES OF PROCEDURE

There were no Waiver Requests for this Appeal.

Mr. Lord polled each Board member and each member stated that there was no regional impact with this Appeal.

After Mr. Lord reviewed the ZBA Rules of Procedures, he swore-in anyone in the audience who may wish to speak on this Appeal.

Attorney Meier, agent for the applicant, presented their Appeal, with a review of his original objection to this case as stated in the December 2017/ January 2018 meeting minutes and then addressed the current objection to the issuance of a building permit to the Richey's for 599 East Shore Road. Atty. Meier cited the square footage of the structure, using basement, 1st floor, 2nd floor and garage area in his calculation for a current structure area of 2310sf. The proposed expansion included the 2759sf in the basement, 3364sf 1st floor and 733sf 2nd floor for a total expansion of 4546sf. Atty Meier stated their position that only 50% of expansion should be allowed, regardless of the whether it is the basement, first or second floor.

Atty. Malia objected to the Atty Meier's review of the sf and reminded the Board that they already decided on and approved the square footage of the proposed plan. The Zoning Ordinance 1.3B only references the 1st floor footprint, not the total living area including basement and/or 2nd floor. The only reason for granting a re-hearing was to address the roof elevation of a variance previously granted in 2009.

Atty. Meier stated that this is a different proposal and should not be allowed to benefit by the variance granted in 2009, which allowed an increase to the roof elevation by 9.12'. This is a grandfathered structure and therefore falls into the Zoning Ordinance 1.3B which allows 50% expansion of the 1st floor footprint which exists as of March 2007.

PUBLIC COMMENT IN SUPPORT OF THIS APPEAL

Mr. Lord opened the hearing to anyone in support of this appeal. Hearing none, this portion of the hearing was closed.

PUBLIC COMMENT IN OPPOSITION TO THIS APPEAL

Mr. Lord opened the hearing to anyone opposed to this appeal.

Atty. Peter Malia, agent for the property owners, opposed this Appeal and asked that the Board deny the Appeal again, as they did in January 2018. At that hearing, the Board conducted a thorough word by word examination of Zoning Ordinance 1.3B and determined that this current proposal met all the criteria of Section 1.3B. The Ordinance allows 50% expansion of the 1st floor footprint which exists as of March 2007.

Atty. Malia stated that the only reason this re-hearing was granted was to address the validity of the 2009 Variance which granted the height of the existing structure to exceed 9' but was never acted upon. Atty Meier argued in his rehearing request that the 2009 Variance may have expired and the

property owners should not be allowed to benefit from that height granted for this new proposal. Atty Malia stated that they are relying on the 2009 Variance as the height of the great room in the new structure is 6' taller than the existing structure, in the non-conforming part of the lot. The proposed height is below the height granted in the 2009 Variance.

Atty. Malia cited new HB 1533 which passed the House and Senate, awaiting the Governor's signature and addressed the expiration of the 2009 Variance. Those variances are valid unless the Town takes action, and Madison has not taken any action.

Atty Malia stated that Atty Meier improperly applied a volume argument to the sf when the Zoning Ordinance clearly states footprint.

Current 1st floor sf in non-conforming part of lot -	1491 sf
Allowed expansion of 50%.	- <u>745.5 sf</u>
Total expansion allowed.	2236 sf

Proposed expansion	1523sf.
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Their plans are well below the requirements of Section 1.3B.

Atty Malia summarized his position for a denial of the Appeal:

1. They have provided photos of existing structure.
2. They have provided renderings of the proposed structure.
3. The Legislature approved HB 1533.
4. The property owners can benefit from the 2009 Variance.
5. The proposal is within the scope of Section 1.3B.
6. The Appeal should be denied once again and the Building Permit issued should remain.

Mrs. King read 2 emails from abutters into the record. Kathryn and Michael Leech, 601 East Shore Drive and Chris Marshall are in support of the proposed structure.

Mr. Lord asked Atty Malia to review the sf numbers.

Atty Malia stated that they are from page 9 of the Jan 2018 ZBA Minutes.

Current 1st floor sf in non-conforming part of lot -	1491 sf
Allowed expansion of 50%.	- <u>745.5 sf</u>
Total expansion allowed.	2236 sf

Proposed expansion	1523sf.
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Atty Meier stated that he used the proposed sf numbers from the basement, 1st floor, 2nd floor and garage.

Mr. Lord read the clause from Section 1.3B, 'any such expansion' and 'only 1st floor footprint'. He questioned Atty Meier's use of the basement, 2nd floor and garage.

Mr. Richey, property owner, clarified that the existing house currently has a full basement and these sf totals were not included in Atty Meier's calculations. It is clear that the new house is 50% of the existing footprint.

Atty Meier stated that one of the conditions to the 2009 Variance was 992sf with no lateral expansion and the Board should not strip the conditions now.

Atty Malia refuted Atty Meier's statement.

Atty Malia addressed these 3 conditions and stated that they do not want them to be stripped:

1. The permissible upward expansion shall be limited to 992sf
2. The proposed roofline shall not exceed 513.9.2'
3. The existing footprint shall not expand laterally

Atty Malia stated that at January hearing, the Board applied this project, word-for-word, to Section 1.3B and the sf results of the Board's deliberation are the same as their calculations.

The 2009 Variance was for height relief only and the 2009 Minutes state that the applicant wanted to expand upwards for a second story, rather than laterally, and seeking an elevation increase of 9.91' above the existing roofline.

Mr. Hughes stated that he sat on the ZBA for that 2009 Variance and his memory is very strong on this point. There was some discussion before the conditions were made that this proposal was only for upward expansion, not lateral expansion. Mr Anderson also sat on the Board for this 2009 Case and agreed that this was a grandfathered property and the applicant only wanted to expand upward. Both Mr Hughes and Mr Anderson agreed that the third condition of lateral expansion was really a statement of fact and not a condition. The 2009 request was only for upward expansion. This current proposal is a completely new plan and this 2009 condition does not pertain now.

STATEMENT OF FACTS

Mr. Lord led the Board in summarizing the statement of facts:

1. This property is on a small waterfront lot, .51ac.
2. The proposed house is 6' taller than the existing home in the non-conforming part of the lot.
3. It is less non-conforming from the sideline setbacks.
4. It is less non-conforming from the lake.
5. The non-conforming portion of the existing house is 1491sf
6. The area within the legal building envelope can be expanded without restriction as long as the current setback and height requirements are met.
7. There is no area in the non-conforming space that is more non-conforming than the existing structure.
8. The proposed structure is further away from the water.
9. The conforming part of the structure is only limited by the 36' height requirement and not limited by the 2009 Variance.
10. The proposed non-conforming roofline is lower than the height restrictions of the 2009 Variance.

PUBLIC PORTION CLOSED

Hearing no further comments from the public, Mr. Totman made a **MOTION** to close the public portion of the hearing; Mr. Hughes seconded. There was no discussion. All approved.

BOARD DELIBERATION

Mr. Totman stated that after a very thorough discussion, he felt that the proposed structure should go forward. It will benefit from the 2009 height variance and the architect's design minimizes the impact on the setbacks. It is further away from the sideline and the lake. The expansion in the conforming area is irrelevant and is a good plan.

Mr. Lord stated that the proposed change to RSA 674:33 has been passed by the House and the Senate and now awaits the Governor's signature. Given this fact, he is inclined accept the validity of the 2009 Variance.

Mr. Hughes stated that the Town of Madison has done nothing to indicate that the 2009 Variance is not valid. Ms. Bartlett agreed.

Mr. Lord stated that this proposal does meet the height restrictions of the 2009 Variance which was granted. He does not agree with how the applicant, Atty Meier, calculated the square footage. Through this exercise, it became clear to him (Mr. Lord) the interpretation of Section 1.3B and the importance and definition of a colon, a semi-colon, a period and where they are placed.

Mrs. Bartlett stated that she calculated the sf and came up with the same numbers.

Mr. Lord stated that back in January, the Board acted as if the 2009 Variance still stood and the other conditions are met as well.

Mr. Hughes reiterated the following facts:

1. The house is moving further back from the lake.
2. The side and rear setbacks are met.
3. The height of the roof with the 2009 Variance is valid with the NH House and Senate approving HB 1533.

Mr. Totman stated that the permitting process addresses the footprint requirement for Section 1.3B.

MOTION

Mr. Lord made a **MOTION to DENY** the Appeal of Administrative Decision; Mr. Totman seconded. No further discussion. All Approved. **MOTION to DENY was GRANTED.**

Mr. Lord read the Appeal process where new information must be presented.

Atty Meier is not aware of his client's wish to appeal to the ZBA for a rehearing or to go straight to Superior Court. As soon as he knows, Atty. Meier will inform the Town and Atty Malia.

ADJOURNMENT:

Mr. Hughes motioned to adjourn; seconded by Mr. Totman. All in favor; meeting adjourned at 7pm.

Respectfully submitted,

Colleen King
Land Use Administrator

These Minutes were APPROVED as written at the July 18, 2018 ZBA meeting.