



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**APPROVED ZBA MINUTES
NOVEMBER 18, 2020**

CALL TO ORDER: Chairman Lucy called the meeting to order at 6:08pm in the Madison Elementary School Gym and Mr. Drew Gentile led those in attendance in saying the Pledge of Allegiance.

Mrs. King read Governor Sununu's Section 18 of Executive Order 2020-04 Temporary Modifications of Public Access to Meetings Under RSA 91-A. This Executive Order allows for electronic participation to conduct meetings and waives the requirement of a quorum to be physically present. A roll call vote for each motion will be taken, as required and anyone who wishes to speak via ZOOM or in person needs to identify themselves.

ATTENDANCE: Mrs. King called the roll:

Stuart Lord -Present Mark Totman - Present via Zoom Drew Gentile -Present via Zoom
Mark Lucy - Present. Bebe Bartlett - Present via Zoom Henry Anderson - Excused

OTHERS PRESENT in PERSON: Colleen King - Land Use Administrator, Moselle Spiller - Madison TV, Mark McConkey, Peter Leonard, Ron Briggs, Sandra & Peter Kondrat, Atty. Kenneth Cargill, Jim Rines, Marge MacDonald, Scott Harrison, Dean Harrison, Jay Buckley, Tom Dinger, Maureen & Tom Wondolowski.

OTHERS PRESENT via ZOOM: Eugene & Bessie DeJesus, Steven Hill & Eva Heilman,

APPROVAL OF OCTOBER 21, 2020 DRAFT MINUTES:

The Draft Minutes were reviewed and a **MOTION** was made by Mr. Lucy to approve the minutes as presented; seconded by Mr. Lord.

VOTE: Mr. Lucy - yes, Mr. Lord - yes, Mr. Totman - yes, Mrs. Bartlett - yes, Mr. Gentile - yes.

ADMINISTRATION: Mrs. King reported that Mr. Doug McAllister has been nominated to be a member of the Zoning Board by Mrs. Bartlett and he has agreed to serve, pending the appointment of the Board of Selectmen at their December 1, 2020 meeting.

Mr. Lucy made a **MOTION** to submit Mr. McAllister's name to the Selectmen for approval; seconded by Mr. Lord.

VOTE: Mr. Lucy - yes, Mr. Lord - yes, Mr. Totman - yes, Mrs. Bartlett - yes, Mr. Gentile - yes.

Mr. Lucy inquired about the status of Mrs. Bartlett; currently she is an Alternate.

Mr. Lucy made a **MOTION** to submit Mrs. Bartlett's name to be a Full ZBA Member to the Selectmen for approval at their December 1, 2020 meeting; seconded by Mr. Lord.

VOTE: Mr. Lucy - yes, Mr. Lord - yes, Mr. Totman - yes, Mrs. Bartlett - yes, Mr. Gentile - yes.

Mr. Lucy announced that he will have to recuse himself from 4 of the 5 hearing on the agenda. Therefore, **Case # 20-07** will be heard first and he will then leave the meeting.

PUBLIC HEARING:

CASE # 20-07 A Variance requested pursuant to the Madison Zoning Ordinance Article IV, Section 4.5 C and Article V, Section 5.9 E by Ronald Briggs, agent for SPK Trust for property located at 13 East Bergamo Road, Map 105, Lot 67, in the Village District of Eidelweiss, to permit the construction of a single family home less than 50 feet from a wetland over 0.25 acres in size and less than 65 feet from the centerline of East Bergamo Road.

MEETING NOTICE:

Mrs. King reported that tonight's Public Hearing was posted on November 5, 2020 in the Madison Town Hall upper and lower levels, Madison & Silver Lake Post Offices and the Conway Daily Sun. All Abutters were notified by certified mail.

CONFLICT OF INTEREST:

The Board was individually polled for any conflicts of interest with Case # 20-07:
Mr. Lucy - no, Mr. Lord - no, Mr. Totman - no, Mrs. Bartlett - no, Mr. Gentile - no.

RULES OF PROCEDURE/ WAIVER REQUEST:

Mr. Lucy reviewed the Rules of this Hearing and Mrs. King reported that there are no waiver requests.

REGIONAL IMPACT: The Board was individually polled on whether this case has regional impact:

Mr. Lucy - no, Mr. Lord - no, Mr. Totman - no, Mrs. Bartlett - no, Mr. Gentile - no.

SWEARING-IN:

Ronald Briggs, Sandra and Peter Kondrat and Jay Buckley were sworn-in by Mr. Lucy.

PRESENTATION/ BOARD QUESTIONS:

Mr. Briggs, agent for SPK Trust, explained that the lot has significant wetland area and they are proposing to construct a 1500sf +/- single-family home, which is smaller than several other homes in close proximity (1550sf, 1700sf and 1800sf). This is a lot of record. The proposed location will be 33.8' to the centerline of the road where 65' is required and 30.4' from the wetlands where 50' is required.

Mr. Lucy asked Mr. Buckley, a VDOE Commissioner, to confirm that the regulation is 50' or greater from the centerline on the road in Eidelweiss. Mr. Buckley stated that VDOE, if given the choice, would prefer that the structure be closer to the road than the wetlands.

Mr. Lord stated that although the .91 acre lot is very small, on the map, it appears to be larger than the surrounding lots. The lot has approximately 40% of wetlands, with only 1/3 buildable area. It seems that there needs to be a compromise between the wetlands and the road.

PUBLIC COMMENT:

Mr. Lucy opened the hearing for public comment.

Mr. Buckley, as VDOE Board Commissioner, expressed their opposition due to the proximity to the wetlands. They have no issue with the 1500sf size of the house but would prefer that it be further from the wetlands. He is concerned with runoff from the structure causing erosion and a sediment build-up.

Mr. Lucy closed the public portion.

BOARD DELIBERATION:

After much discussion between Board Members, it was discovered that the septic location will also need a Variance and was not included in this application. Mr. Lucy commented that the applicant does have the option to continue and include the septic plans. Mr. Briggs and the Kondrats agreed to continue until next month.

MOTION/VOTE:

Mr. Lucy made a MOTION to continue Case # 20-07 to add the septic and make the appropriate changes; seconded by Mr. Lord. This case will be reposted.

VOTE: Mr. Lucy - yes, Mr. Lord - yes, Mr. Totman - yes, Mrs. Bartlett - yes, Mr. Gentile - yes

Mr. Lord chaired the remaining cases.

CASE # 20-04 (Cont.) A Variance is requested pursuant to Madison Zoning Ordinance Article IV Section 4.5 by Mark McConkey, agent for Eugene and Bessie DeJesus, for property located at 11 Blinden Drive, Tax Map105, Lot 23 in the Village District of Eidelweiss, to permit the construction of a single-family home and associated driveway, septic and grading, which is in violation of the wetlands buffer setbacks.

MEETING NOTICE: Mrs. King reported that tonight's Public Hearing was continued from the October 21, 2020 meeting and was originally posted on October 5, 2020 in the Madison Town Hall upper and lower levels, Madison & Silver Lake Post Offices and the Conway Daily Sun.

All abutters were notified by certified mail. RSA 676:7, V allows for a Public Hearing to be continued to a specific place and time, without requiring additional notice, if the ZBA finds that it cannot conclude the Public Hearing in the available time. Additional public notice was not given for this continued case. However, notice was posted on November 5, 2020 at the Madison and Silver Lake Post Offices and the upper and lower levels of Madison Town Hall.

CONFLICT OF INTEREST:

The Board was individually polled for any conflicts of interest with Case # 20-04:

Mr. Lord - no, Mr. Totman - no, Mrs. Bartlett - no, Mr. Gentile - no. Mr. Lucy recused himself.

RULES OF PROCEDURE/ WAIVER REQUEST:

Mr. Lord reviewed the Rules of this Hearing and explained that there will be a 4-member board. He explained that there must be at least 3 'yes' vote to approve this request and a reduced Board may not be a reason for Appeal. Mrs. King reported that there are no waiver requests.

A Waiver Request was submitted from the whole lot plot plan as there was a plan drawn up in April 2018, depicting topographical lines every 2', the wetlands, the location of the house and road.

Mr. Lord made a MOTION to accept this Waiver Request, Mr. Totman seconded.

VOTE: Mr. Lord - yes, Mr. Totman - yes, Mrs. Bartlett - yes, Mr. Gentile - yes

REGIONAL IMPACT:

The Board was individually polled on whether this case has regional impact:

Mr. Lord - no, Mr. Totman - no, Mrs. Bartlett - no, Mr. Gentile - no.

SWEARING-IN:

Mark McConkey, Jay Buckley and Jim Rines were sworn-in.

PRESENTATION/ BOARD QUESTIONS:

Mr. McConkey explained that this lot had been granted a Variance several years ago for a larger house in the same location but because it was not acted upon, the Variance expired. There is an approved septic and the proposed home will be smaller than the previously approved home. A driveway permit has already been approved also. Mrs. King read a letter from Eugene and Bessie DeJesus explaining their plans.

Mr. Lord asked if there was any other area on the lot for the house? Mr. McConkey explained that the unique topography of the lot does not lend itself to moving the house.

Mr. Totman reviewed the 2017 Variance that was approved and stated that no zoning change have been made that would impact this lot. Mr. Gentile stated that without a Variance, this is an unbuildable lot.

PUBLIC COMMENT:

Mr. Lord opened the Hearing for public comment.

Mr. Buckley, VDOE Board Commissioner, stated that their concern is protecting the wetlands and they have no objection with the house being closer to the road and further from the wetlands.

Mr. McConkey stated that the foundation will have a drain to address run-off but there is no other place for the septic. Mr. Buckley was okay with the septic location.

Mr. Rines, engineer for White Mountain Engineering and Surveying, stated that this lot received septic approval. If the home and or driveway were to be relocated, it would have more impact on the wetlands.

Mr. Lord closed the public portion.

BOARD DELIBERATION:

The Board reviewed the findings of facts:

1. The lot has 1.1 acre with extensive wetlands.
2. The lot was zoned as a buildable lot when subdivided and has been taxed as such.
3. The only other dry spot according to the site plan is in front of the house that abuts the property from the east and south and there would be no place for the septic.
4. A Variance was granted in October 2017 and expired per RSA 674:33 I-A.a.
5. A small 3-bedroom home is in keeping with the neighborhood.
6. The property is unique and much of the lot is wetlands.
7. There is ½ acre of usable land.

Mr. Totman stated that there was good engineering work and it appears that good construction practices will be followed.

Mr. Gentile did not see an advantage to moving the house and the location is not ideal but is the best for the lot.

Mr. Lord stated that given the contour of the land, the house location is the best fit.

Mrs. Bartlett commented that moving the driveway location doesn't improve the setbacks.

The Board reviewed and discussed how each of the conditions would be met for this Variance request.

MOTION/ VOTE:

Mr. Lord made a MOTION to approve the variance request as is; seconded by Mr. Totman.

VOTE: Mr. Lucy - yes, Mr. Lord - yes, Mr. Totman - yes, Mrs. Bartlett - yes, Mr. Gentile – yes.

Mr. Lord read the 30-day Appeal Period.

CASE # 20-05 (Cont.) A Variance is requested pursuant to Madison Zoning Ordinance Article V Section 5.9 E by Peter Leonard, agent for Steven & Beth Haidaichuk, for property located at 29 Oak Ridge Road, Tax Map 104, Lot 91 in the Village District of Eidelweiss, to permit the construction of a single-family home within 65' of the centerline of the road and 25' from the side lot line.

MEETING NOTICE: Mrs. King reported that tonight's Public Hearing was continued from the October 21 meeting and was originally posted on October 5, 2020 in the Madison Town Hall upper and lower levels, Madison & Silver Lake Post Offices and the Conway Daily Sun. All abutters were notified by certified mail. RSA 676:7 V allows for a Public Hearing to be continued to a specific place and time, without requiring additional notice, if the ZBA finds that it cannot conclude the Public Hearing in the available time. Additional public notice was not given for this continued case. However, notice was posted on November 5, 2020 at the Madison and Silver Lake Post Offices and the upper and lower levels of Madison Town Hall.

CONFLICT OF INTEREST:

The Board was individually polled for any conflicts of interest with Case # 20-05:
Mr. Lord - no, Mr. Totman - no, Mrs. Bartlett - no, Mr. Gentile - no.

RULES OF PROCEDURE/ WAIVER REQUEST:

Mr. Lord reviewed the Rules of this Hearing and explained that there will be a 4-member board. He explained that there must be at least 3 'yes' votes to approve this request and a reduced Board may not be a reason for Appeal. Mrs. King reported that there are no waiver requests.

REGIONAL IMPACT:

The Board was individually polled on whether this case has regional impact:
Mr. Lord - no, Mr. Totman - no, Mrs. Bartlett - no, Mr. Gentile - no.

SWEARING-IN:

Peter Leonard, Jay Buckley, Tom & Maureen Wonlowski were sworn-in.

PRESENTATION/ BOARD QUESTIONS:

Mr. Leonard, agent for the property owners, presented the Variance request. In 2014, a Variance had been granted on this same lot and the same size house. The lot is .51 acres and is very steep with little buildable area. They are requesting relief to build 13' instead of 25' from the side lot line and 42' instead of 65' from the centerline of the road.

Mr. Lord commented that the lot is long and narrow with a steep grade and if the house were to be moved further back, it would need a very deep foundation.

Mr. Leonard stated that the lot already has a driveway and the permit from VDOE.

Mr. Gentile stated that looking at the contour lines, the proposed location is the only place to put the house.

Mr. Totman commented that the houses across the street are closer to the center line of the road.

PUBLIC COMMENT:

Mr. Lord opened the Hearing for public comment.

Mr. Wonlowski lives at 30 Oak Ridge Road and bought the lot at 28 Oak Ridge to insure his privacy. He is concerned with the negative visual impact that this house will have on his property. Mrs. Wonlowski expressed her concern with all the parking on the street and their ability to get out of their driveway.

Mr. Buckley, VDOE Commissioner, stated that although they are not opposed to this plan, they are concerned with the location of the driveway. The septic is in front of the house which would not allow for parking in front of the house. He asked that for safety reasons, that all vehicles be pulled off the road.

Mr. Lord closed the public portion.

BOARD DELIBERATION:

The Board reviewed the findings of facts:

1. The property is very narrow with a steep slope in the long direction away from the road.
2. If moved north away from the southern border, it would infringe on neighbor's view across the street, looking east and put the power line pole very close to the driveway (the pole is approximately at the NW corner of the lot).
3. All neighboring houses are located very close to the road due to the steepness of the land on both sides of the street.
4. The property is very small (less than ½ acre) at 0.49 acres.
5. The location of the house is consistent with the look and feel of the Eidelweiss neighborhood.
6. There is "reasonable" space towards the adjacent house to the south.
7. Taxes have been paid on the land as a buildable lot.
8. There is parking provided on the side of the house and not on the street.

Mr. Lord stated that the setbacks of the house seem consistent with the neighborhood and the off-street parking eliminates the safety hazards and allows for snow plowing. The proposed use is a buildable lot.

Mrs. Bartlett stated that they needed relief from the side and road setbacks.

Mr. Gentile said that while it might be inconvenient to the neighbor across the street, it's a buildable lot.

Mr. Lord stated that in order to get the proposed house out of the neighbor's view, the house have to be pushed so far back that the cost of fill due to the steepness of the land would make it prohibitive.

Mr. Totman stated that moving the house back 12' will not change the visual character of the property or the neighborhood.

The Board reviewed and discussed how each of the conditions would be met for this Variance request.

MOTION/ VOTE:

Mr. Lord made a **MOTION** to approve the variance request as presented; seconded by Mr. Totman.

VOTE: Mr. Lord - yes, Mr. Totman - yes, Mrs. Bartlett - yes, Mr. Gentile – yes.

Mr. Lord read the 30-day Appeal Period.

CASE # 20-08 A Variance is requested pursuant to Madison Zoning Ordinance Article V, Section 5.9 C by Atty Kenneth Cargill, agent for Stephen S. Hill Revocable Trust and the Eva S. Heilman Amended and Restated Trust Agreement, for property located at 86 & 87 Shieling Road, Map 120, Lot 28 & 29 in the Rural Residential District, to permit the construction of a single-family home 60 feet from Silver Lake, where 75 feet is required.

MEETING NOTICE:

Mrs. King reported that tonight's Public Hearing was posted on November 5, 2020 in the Madison Town Hall upper and lower levels, Madison & Silver Lake Post Offices and the Conway Daily Sun. All abutters were notified by certified mail.

CONFLICT OF INTEREST:

The Board was individually polled for any conflicts of interest with Case # 20-08:

Mr. Lord - no, Mr. Totman - no, Mrs. Bartlett - no, Mr. Gentile - no.

RULES OF PROCEDURE/ WAIVER REQUEST: Mr. Lord reviewed the rules of this Hearing and explained that there will be a 4-member board. He explained that there must be at least 3 'yes' votes to approve this request and a reduced Board may not be a reason for Appeal. Mrs. King reported that there are no waiver requests.

REGIONAL IMPACT:

The Board was individually polled on whether this case has regional impact:
Mr. Lord - no, Mr. Totman - no, Mrs. Bartlett - no, Mr. Gentile - no.

SWEARING-IN:

Atty Cargill, Marge MacDonald, Dean Harrison, Scott Harrison, Steve Hill (via ZOOM) and Jim Rines were sworn-in.

PRESENTATION/ BOARD QUESTIONS:

Atty. Cargill presented the proposal. Lots 28 and 29 currently are very irregular in shape with dilapidated structures that lack aesthetic appeal and functionality. There is a pre-existing driveway that provides for access to lot 27 and runs across lot 29 and the topography prevents the driveway from being relocated.

The plan, if approved, will eliminate 3 existing non-conformities:

1. Lots 28 & 29 will be merged into one lot and this will increase the lot size to 4.32 acres.
2. The combined shoreline increases to 225', exceeding the minimum shoreland frontage of 200'.
3. The existing cabin on lot 28 will meet the definition of a detached Accessory Dwelling Unit (ADU) per Madison Zoning Ordinance.

With all the structural improvements planned, the property values will be positively impacted. Moving the house further back into the embankment of the land will require cost-prohibitive site alteration.

Mr. Lord confirmed that the porch on the lake side will be 60' from the lake and the driveway is up against the opposite side of the house, which prevents the house from moving further back.

Mr. Totman remarked that there would still be 3 pre-existing non-conformities remain if this plan is approved.

Atty. Cargill concurred that 3 would be eliminated and 3 would remain.

PUBLIC COMMENT:

Mr. Lord opened the Hearing for public comment.

Mrs. Marge MacDonald, a local real estate agent, was happy that this property would finally be cleaned up as it has been an eyesore for years. It will be an asset to the land around Silver Lake.

Mr. Dean Harrison inquired about which structures would be demolished and was glad that the 'Blue Bird' cottage would be rebuilt in the same location. His family has lived near Silver Lake since 1923.

Mr. Steve Hill stated that the main reason to build the house on the southern portion of the lot is to keep it away from Shieling Landing. This will position the house 80' from the beach at Shieling Landing and keep the area looking natural.

Mrs. King read 4 letters from abutters into the record. Mr. Lord closed the public portion.

BOARD DELIBERATION:

The Board reviewed the Findings of Fact:

1. After the boundary line adjustment and lot merger, the lot will be 4.32 acres with 225' of lake frontage.
2. The property is very irregular, like none other in Madison.
3. The topography to the east is very steep.
4. The irregular boundary lines make it difficult to build on while still enjoying lake life.

Mr. Lord reviewed and led a discussion on the conditions to be met for a Variance. He stated that the Madison Zoning requires 75' from the Lake and the State requires 50' from the Lake. They will still need a Shoreland Permit and State approval for a new septic. If this lot does not get relief, then it becomes an unbuildable lot.

The slope of the property is a special condition of the lot.

Mrs. Bartlett stated that the new lot size would allow for an ADU and is not contrary to public interest.

Mr. Totman stated that there would still be 3 grandfathered non-conformities existing after approved. Mr. Gentile stated that grandfathered non-conformities have nothing to do with the Variances requested and this is a reasonable use of the property. Mr. Lord agreed.

MOTION/ VOTE:

Mr. Lord made a **MOTION** to approve the variance request as presented; seconded by Mrs. Bartlett.

VOTE: Mr. Lord - yes, Mr. Totman - yes, Mrs. Bartlett - yes, Mr. Gentile – yes.

Mr. Lord read the 30-day Appeal Period.

CASE # 20-09 A Variance is requested pursuant to Madison Zoning Ordinance Article IV, Section 4.5 C, by James Rines, agent for Patti Smith-Jacobus and Glenn W. Jacobs, for property located at 17 Geneva Place, Map 104, Lot 150, in the Village District of Eidelweiss, to permit the construction of an addition to their home within 30 feet of a poorly drained wetland less than 0.25 acres and within 75 feet of a very poorly drained wetland.

MEETING NOTICE:

Mrs. King reported that tonight's Public Hearing was posted on November 5, 2020 in the Madison Town Hall upper and lower levels, Madison & Silver Lake Post Offices and the Conway Daily Sun. All Abutters were notified by certified mail.

CONFLICT OF INTEREST:

The Board was individually polled for any conflicts of interest with Case # 20-09:

Mr. Lord - no, Mr. Totman - no, Mrs. Bartlett - no, Mr. Gentile - no.

RULES OF PROCEDURE/ WAIVER REQUEST: Mr. Lord reviewed the Rules of this Hearing and Mrs. King reported that there are no waiver requests.

REGIONAL IMPACT:

The Board was individually polled on whether this case has regional impact:

Mr. Lord - no, Mr. Totman - no, Mrs. Bartlett - no, Mr. Gentile - no.

SWEARING-IN:

Jim Rines was sworn-in.

PRESENTATION/ BOARD QUESTIONS:

Mr. Rines explained that the proposal is to increase living space, not add bedrooms to this 0.60 acre lot. The existing structure would require a variance for any addition and this plan would be less disruptive and more cost effective. The addition would be 65' from the wetland where 75' is required. Shoreland Permits will be required and a new septic plan needs to be approved but not installed.

Mr. Lord asked if a redevelopment waiver is needed from the State? Mr. Rines explained that stormwater mitigation, as part of the shoreland process, will be added, where none exists. The entire pre-existing non-forming house was built in 1985, prior to the Madison Wetlands Setback Ordinance.

PUBLIC COMMENT:

Mr. Lord opened the Hearing for public comment. Hearing none, Mr. Lord closed the public portion.

BOARD DELIBERATION:

The Board reviewed the Findings of Fact:

1. It is a very small lot of 0.60 acres
2. Stormwater mitigation will be part of the Shoreland Impact Permit consistent with the Shoreland Water Quality Protection Act.
3. Based on the current setback requirements of 65’ from the center of the road and 75’ from the high-water mark, there is only a small triangular building envelope that is 13.4’ wide tapering to zero.
4. The expansion of the house is in keeping with the other houses in the neighborhood.
5. The proposed stoop will be 2.3’ from poorly drained soil. The character of this “wetland” is one that a lay person would not recognize. There is minimum wetland.
6. The house was constructed in 1985 and now the owners want to use it more frequently.
7. The house is almost 100% pre-existing non-conforming today.

Mr. Lord reviewed and led a discussion on the conditions to be met for a Variance. The proposed plan blends into the neighborhood and the property owners would have more of a loss than the public, if denied. The building envelope is almost non-existent. There is no threat to public safety.

Mr. Gentile stated that this is a reasonable request.

Mrs. Bartlett agreed with Mr. Gentile.

Mr. Lord stated that this is a responsible way to increase living space,

Mr. Totman thinks that it will blend into the neighborhood.

MOTION/ VOTE:

Mr. Lord made a **MOTION** to approve the variance request as presented; seconded by Mrs. Bartlett.

VOTE: Mr. Lord - yes, Mr. Totman - yes, Mrs. Bartlett - yes, Mr. Gentile – yes.

Mr. Lord read the 30-day Appeal Period.

ADJOURNMENT: Mr. Lord made a **MOTION** to adjourn at 10:05pm; seconded by Mrs. Bartlett.

VOTE: Mr. Lord - yes, Mr. Totman - yes, Mrs. Bartlett - yes, Mr. Gentile – yes.

Minutes Submitted by:

Colleen King

Madison Land Use Administrator

These minutes were APPROVED at the December 16, 2020 ZBA meeting.