



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
December 15, 2021**

CALL TO ORDER: Mr. Stu Lord called the meeting to order at 6:00pm and those in attendance in reciting the Pledge of Allegiance.

ATTENDANCE: Chairman Stuart Lord; Drew Gentile; Bebe Bartlett; Doug McAllister; Alternates George Rau and Marc Ohlson

EXCUSED: Mark Totman

OTHERS PRESENT: Linda Shackford, Town Administrator; Morency- Madison TV; Applicant Hillary Twigg-Smith and Agent Shawn Bergeron; White Mountain Survey & Engineering James Rines; Resident Sharon Shilling and several public

Case # 21-13 – Continued from November 17, 2021 - Special Exception is requested by Shawn Bergeron, Agent for Hillary Twigg-Smith, for property located at 397 Bickford Road, Map 223, Lot 7, to ask for a Special Exception for a Lodging House (Bed and Breakfast) at this property as specified in the Zoning Ordinance Article 4.2 (B)(7).

Case #21-14, submitted by the same applicant will be handled separately from this application.

MEETING NOTICE: Shackford reported that tonight's Public Hearing was posted on November 4, 2021 in the Town Hall upper and lower levels, Madison & Silver Lake Post Offices and on November 4, 2021 the Conway Daily Sun. All Abutters were notified by certified mail.

ELEVATION OF ALTERNATES: Alternate Rau was elevated to a full member for this case.

CONFLICT OF INTEREST:

The Board was individually polled for any conflicts of interest with Case # 21-13: Lord – no, Gentile - no, McAllister - no, Bartlett – no, Rau - no.

RULES OF PROCEDURE/ WAIVER REQUEST:

There were no waivers request for this case.

REGIONAL IMPACT:

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

Lord - no, Rau - no, McAllister - no, Gentile – no, Bartlett - yes.

Bartlett's concern is that Eaton could have an interest because of the use of Glines Hill Road. Discussion of potential impact brought the realization that it was the upcoming Case 21-14 that could have impact

and Bartlett changed her vote to no. It was unanimously decided that this application has no regional impact.

SWEARING IN:

Lord asked all public in attendance that will speak to this case to stand and affirm that they “swear that the testimony that you will give pertaining to this Case will be truthful under penalty of perjury?”.

PRESENTATION/ BOARD QUESTIONS: Shawn Bergeron of Bergeron Technical Services, Agent for the applicant, presented to the Board a request for a special exception for a Bed & Breakfast (B&B) as allowed under Article 4.2 (B)(7). Bergeron listed the four criteria necessary to meet and explained:

- the 83-acre parcel has a home that already exists on site adding the home cannot be seen from the road or abutters. The B&B is an extension of the residential use, no bedrooms will be added and it is not different from your typical residence;
- the proposal will not create traffic, submitting a traffic study where the engineer cited no significant impact or safety concerns;
- Fire Chief Brooks expressed no particular concerns and will inspect the building should it be approved;
- The home far exceeds the setbacks; and
- There is enough parking for ten vehicles.

Lord asked how many bedrooms in the house. Bergeron responded it has 6, could be 8, with two rooms being used for the owner occupied. The applicant affirmed that she has lived there for twenty-two years.

McAllister asked if the B&B would be associated with the campground or conference center. Bergeron responded that there is no request for a campground on either application. McAllister expressed concern that online reviews stated that the owner was not present. The applicant was not running a B&B at the time.

Lord opened the floor to public comment for opposition and began by noting that there were just under thirty pieces of correspondence regarding this application with one email in favor of the special exception. Several of the opposed asked for letters to be read into the record. Lord, in lieu of reading all, read one dated December 13, 2021 from Sanders R. and Elizabeth B Witman which Lord felt embodied the collective feel of the letters of opposition. The letter cited concerns of adverse traffic impact, septic disposal issues, well contamination and life safety concerns. Events, campers, musical events and steady traffic interrupt quiet solitude; “The application contains no information that suggests anything but a further reduction in quality of life to the petitioner’s neighbors, and value to our properties.” Lord read the last names of the opposed and the one in favor. Gentile added that six were explicitly against the B&B with eight possibly in favor of the B&B but not the conference center in Case 21-15.

Carol Felise, Modoc Hill Road, expressed her concern for the septic capacity and her opposition of the application. It was clarified by Bergeron that the present system is not in failure and a future step in the process is to have the system evaluated before moving forward.

David Evans, 132 Modoc Hill Road, agrees with the Witman letter and is opposed to this application.

Mike Fleuger, agreed with Mr. Evans and was sad to say that he has had to call the police because of 2:00 am parties and noisy nights. Fleuger made note that there is a Class VI road in front of the applicant’s house that is a public right-of-way.

Sharon Shilling, 537 Bickford Road, expressed several concerns regarding the application before the board. Those included:

- Concern that that the wetlands in the recent sub-division were greatly understated;
- Concern that the traffic on a dirt road accessed from a dirt road. Dust created by a 10 times increase in vehicle traffic could be considered injurious or a nuisance;
- Concern that this could change the nature of the environment that is currently farm, residential and woodland;
- Income is not necessary that comes at via a commercial enterprise that is injurious to others;
- A special exception is just that, “special”, and it is not be received as positive by the neighbors;
- The traffic study was not received prior to this meeting as promised by the applicant; and
- Bickford Road is already in disrepair because of a logging operation.

Bergeron was offered to rebut those opposing statements:

- The wetland that were delineated were for the subdivision and not a requirement of this special exception;
- The claim that that the existing use is injurious – Twigg-Smith realizes operations in the past were not well received and wants to legitimize it adding that the applicant will abide by the conditions of the Board should approval be granted;
- There are no plans on either application in regard to campgrounds;
- The zoning ordinance allows ten commercial enterprises in the rural residential district and B&B is one, it is available to any owner should the criteria be met;
- The DPW Director saw no concerns with this application with the exception of during mud season with the applicant agreeing to not operate during mud season;
- Apologies were expressed for not having forwarded the traffic study ahead citing the study as estimating 11 trips per day; and
- This income source is in lieu of a multi parcel subdivision.

FINDING OF FACTS:

1. Gentile: The Master Plan states to retain the rural character of the area while allowing for reasonable industry;
2. Gentile: Opposition was explicit from six letters with eight not as not as strong if managed properly;
3. Bartlett: This B&B would be on a one-lane road in a very rural area;
4. McAllister: Closest retail facility is at least 5 miles away.
5. Rau: There used to be 3 or 4 B&Bs already in Town.
6. Gentile: Increased traffic to 22 trips per day when B&B is at full occupancy.
7. Lord: B&B is defined as owner occupied.
8. Lord: Not all eight bedrooms will be used for guests.
9. Gentile: Most all the abutter testimony is in opposition.

Motion by Lord, seconded by McAllister to close the public hearing. The motion passed unanimously.

DELIBERATION:

McAllister noted that the neighbors state they feel it is a nuisance but he questions if it impacts property values. Bartlett is concerned whether it is compatible with the area. Gentile cannot see that a B&B makes a lot of difference to a neighborhood with McAllister wondering if it will have full occupancy

every night of a week. Lord sees a B&B as pretty docile but knows it is part of a larger conference center plan. Lord noted that the house is existing and could be fully occupied with family so see no change in potential traffic; the home is closely centered on the property having adequate parking. Rau noted that this will not be a year-round venture as it will be closed during mud season. Bartlett reiterated that it will be owner occupied as per definition.

Motion by McAllister, seconded by Bartlett to approve the application for special exception for a 5-bedroom owner occupied Bed & Breakfast with the following conditions:

- Bed and Breakfast will not operate when Town roads are posted; and
- The septic system will be reviewed as part of the approval.

This land use is in keeping with the Rural Residential nature of the area and meets the four conditions called out in the Madison Zoning Ordinance 4.2.B (Conditions to be met).

Rollcall Vote: McAllister – Aye Lord – Aye Rau - Aye Gentile – Aye Bartlett - Aye
The motion passed **5-0** by roll-call vote. The motion passed **5-0** by roll-call vote.

Lord read the provisions of the 30-day appeal period. Lord closed Case 21-13.

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Bergeron, agent for Case #21-13 asked for time to talk with his client. The Board moved to Case #21-15.

Case # 21-15 Variances are requested by James Rines. Agent for Stephen & Lou-Ann Kennedy, for property located at 69 Caroline Road, Map 129, Lot 011, to construct an addition being less than 25 feet from the north and south boundary lines; less than 75 feet from the mean high-water mark of Silver Lake; and greater in size than 50% of the existing structure’s first floor footprint within the 75 foot setback from Silver Lake in violation of Article I, Section 1.3B and Article V, Sections 5.9 A&C of the Madison Zoning Ordinance.

MEETING NOTICE: Shackford reported that tonight's Public Hearing was posted on December 1, 2021 in the Town Hall upper and lower levels, Madison & Silver Lake Post Offices and on December 7, 2021 the Conway Daily Sun. All Abutters were notified by certified mail.

ELEVATION OF ALTERNATES: Alternate Ohlson was elevated to a full member for this case.

CONFLICT OF INTEREST:

The Board was individually polled for any conflicts of interest with Case # 21-14: Lord – no, Gentile - no, McAllister - no, Bartlett – no, Ohlson - no.

RULES OF PROCEDURE/ WAIVER REQUEST:

There were no waivers request for this case.

REGIONAL IMPACT:

The Board was individually polled on whether this case has regional impact:
Lord - no, Ohlson - no, McAllister - no, Gentile – no, Bartlett - no.

SWEARING IN:

Lord asked all public in attendance that will speak to this case to stand and affirm that they “swear that the testimony that you will give pertaining to this Case will be truthful under penalty of perjury?”.

PRESENTATION/ BOARD QUESTIONS:

James Rines, agent of White Mountain Survey & Engineering, presented Case 21-15 at 69 Caroline Road, Tax Map 129-011, a 0.69 acre lot. While reviewing for tonight’s meeting Rines found that the shed roof on the garage is not noted in the application and was instead withdrawn in hopes that the Board would entertain review and a possible continuance.

Rines went on to explain that the 72’ wide lot has an existing pre-zoning home that is 36.6’ from the water, 19.7’ from the south boundary, 13.4 from the north boundary and the stairs are 18.4’ from the boundary.

Lord asked Rines if he would like to continue this application to a later date. Rines, in light of possible zoning changes to Section 1.3B, would like to continue and amend the plan to reflect the changes. Bartlett would like to have the abutters re-noticed because of the change with Rines offering to compensate the Town.

Motion by Gentile, seconded by Ohlson to continue this application to the January 19, 2022 meeting with abutters being re-noticed. The motion passed **5-0**.

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Case 21-14 – Continued from November 17, 2021 - Special Exception is requested by Shawn Bergeron, Agent for Hillary Twigg-Smith, for property located at 397 Bickford Road, Map 223, Lot 7, to ask for a Special Exception for a Conference Center Facility at this property as specified in the Zoning Ordinance Article 4.2 (B)(8).

MEETING NOTICE: Shackford reported that tonight's Public Hearing was posted on November 4, 2021 in the Town Hall upper and lower levels, Madison & Silver Lake Post Offices and on November 4, 2021 the Conway Daily Sun. All Abutters were notified by certified mail.

ELEVATION OF ALTERNATES: Alternate Ohlson was elevated to a full member for this case.

CONFLICT OF INTEREST:

The Board was individually polled for any conflicts of interest with Case # 21-15: Lord – no, Gentile - no, McAllister - no, Bartlett – no, Ohlson - no.

RULES OF PROCEDURE/ WAIVER REQUEST:

There were no waivers request for this case.

REGIONAL IMPACT:

The Board, citing discussion from Case 21-13, was in agreement that the use of Glines Hill Road coming in from the Town of Eaton could be considered having a regional impact. The Town of Eaton will be noticed of this application.

Shawn Bergeron, Agent for the applicant Hillary Twigg-Smith, requested a continuance to the February 16, 2022 meeting to look for the opportunity to meet with abutters and neighbors regarding this case.

Motion by Lord, seconded by McAllister to continue this Case 21-14 to the February 16, 2022 meeting with the Town of Eaton being noticed regarding potential regional impact. The motion passed **5-0**.

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Case # 21-16 Variances are requested by James Rines. Agent for Voorhees & Gloria Dunn, for property located at 13 Little Shore Drive, Map 109, Lot 106, to construct a wooden ramp and shed. The ramp and shed are less than 75 feet from the mean high-water mark of Little Pea Porridge Pond and less than 20 feet from the north and south boundary lines, respectively, in violation of Article V, Sections 5.9C and F of the Madison Zoning Ordinance. The shed is also less than 65 feet from the center line of Little Shore Drive in violation of Article V, Section F.

MEETING NOTICE: Shackford reported that tonight's Public Hearing was posted on December 1, 2021 in the Town Hall upper and lower levels, Madison & Silver Lake Post Offices and on December 7, 2021 the Conway Daily Sun. All Abutters were notified by certified mail.

ELEVATION OF ALTERNATES: Alternate Rau was elevated to a full member for this case.

CONFLICT OF INTEREST:

The Board was individually polled for any conflicts of interest with Case # 21-14: Lord – no, Gentile - no, McAllister - no, Bartlett – no, Rau - no.

RULES OF PROCEDURE/ WAIVER REQUEST:

There were no waivers request for this case.

REGIONAL IMPACT:

The Board was individually polled on whether this case has regional impact: Lord - no, Rau - no, McAllister - no, Gentile – no, Bartlett - no.

James Rines, agent of White Mountain Survey & Engineering, presented Case 21-16 at 13 Little Shore Drive, Tax Map 109-106, a 0.33 acre lot. The applicant is in hopes of retaining an existing wooden ramp and shed in violation of Section 5.9 C&F. The ramp was created and a shed was delivered prior to obtaining permits and this application is the first in the process to rectify the mistake. The purpose of the ramp is because Mrs. Dunn has mobility issues and it was difficult, if not impossible, for her to maneuver the steep terrain to the water. The applicant has not yet filed for the shoreland permit from NHDES because using a handicapped application. The plan is to convert the driveway to an impervious surface as to come into compliance.

Ohlson asked for an explanation of the ramp construction. Rines stated that the posts and stairs that were installed created the least amount of impact as stairs are allowed, versus steps which are not allowed. Lord noted that it appears there is no location to put the shed without being in violation, Rines agreed citing only 34 square feet of space. McAllister agreed to no other possible location for the shed. Rau confirmed that the reason for the ramp was because of a handicap issue noting the steepness. Rines explained that it does not need to be ADA compliant for personal use.

The hardship is that there is not an alternative for placement of the shed or ramp without violation. The variance will not be contrary to the public interest because there is not alternative location available, it enhances the property and creates a safe access to the water. The spirit of the ordinance is observed because placement of the shed is the only location and a shed is a reasonable request for the property. Substantial justice is done because the proposal is consistent with the neighborhood having small lots and steep slopes. There is no public gain in not granting the variance. The value of the surrounding properties would not be diminished. The proposed use is a reasonable one because a shed is a reasonable and allowable accessory use

FINDING OF FACTS:

1. Small steep lot;
2. Not able to meet the zoning conditions;
3. NHDES will be receiving an application;
4. Ramp is constructed over the slope, not cut into the banking;
5. There is no location that the shed would not violate zoning;
6. Owner is mobility impaired;
7. Ramp is not ADA compliant, but that is not required;
8. Ramp is all within 75' of the shorefront setback;
9. The shed is located outside the 75' shorefront setback.

Motion by Lord, seconded by Gentile to close the public hearing. The motion passed unanimously.

Reiterating the discussion during comments and adding that there are no remarks from abutters or public;

Motion by Lord, seconded by McAllister to approve the application as requested because substantial justice will be done based upon the uniqueness of the lots size and steepness.

Rollcall Vote: McAllister – Aye Lord – Aye Rau - Aye Gentile – Aye Bartlett – Aye

The motion passed **5-0** by roll-call vote. The motion passed **5-0** by roll-call vote.

Lord read the provisions of the 30-day appeal period. Lord closed Case 21-16.

ADMINISTRATION:

APPROVAL OF November 17, 2021 DRAFT MINUTES:

The Draft Minutes were reviewed and a **MOTION** was made by Lord, seconded by Rau to approve the minutes as presented. The motion passed 4-0-1 with Gentile abstaining as he was not present at the November 17, 2021 meeting.

Resident Jacob Martin has asked to be appointed as an alternate member of the Board.

Motion by Lord, seconded by McAllister to ask the Board of Selectmen to appoint Jacob Martin to a three-year term as an alternate. The motion passed **unanimously**.

Motion by Lord, seconded by McAllister to ask the Board of Selectmen to appoint George Rau to a three-year term as an alternate. The motion passed **unanimously**.

The next meeting of the Zoning Board of Adjustment will be held on January 19, 2022 at 6:00 pm.

ADJOURNMENT:

Motion by Gentile, seconded by Rau to adjourn the meeting. The motion passed **unanimously**.

The meeting adjourned at 9:04pm.

Respectfully Submitted,

Linda Shackford
Town Administrator