



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
November 16, 2022**

ATTENDANCE: Chairman Drew Gentile, Vice-Chairman Jake Martin, Doug McAllister, George Rau, Bebe Bartlett, Alternate – Marc Ohlson

EXCUSED: Mark Totman

OTHERS PRESENT: Madison TV, Asia Morency, Thomas Byrne, Mark S. and Heather J. Sherwood, Linda Shackford, Kate Young and other members of the public

CALL TO ORDER: 6:00 PM by Chairman Drew Gentile. Marc Ohlson led the pledge of allegiance.

Drew Gentile presided over the following hearing.

Shackford read aloud **Case 22-11 – Continued** – Variances are requested by Thomas and Jami Byrne, Trustees of The Byrne Family Trust for vacant property located on Cranmore Drive, Tax Map 116 Lot 015, from Article V Sections 5.9A and 5.9D to construct a new building to be 44.24' from the centerline of Twin Mountain Circle and 68.84' from the centerline of Cranmore Drive where 75' is required and Article V Section 5.9A to construct a deck to be 14.07' from the lot line where 25' is required and Article IV Section 4.5C to construct a house within 40.18' of poorly drained soil where 75' is required.

Shackford read the posting information: Posted at Town Hall, Silver Lake and Madison Post Offices on November 2, 2022; Published in the Conway Daily Sun on November 2, 2022 and Certified mailing were sent on November 1, 2022.

Gentile polled the board as follows:

Conflict of Interest: All three board members stated they has no conflict of interest in this case via roll call.

Waiver Request: There were none.

Regional Impact: All members stated they see no regional impact in this case via roll call.

Swearing In: Gentile sworn in Thomas Byrne after asking if anyone wished to speak to this case.

Gentile stated there was a minor error in the notification of variance in that “40.18’ of poorly drained soil where 75’ is required”. It should actually be 50’ required pursuant to Section 4.5, Setbacks for Wetlands.

Mr. Byrne stated his request for relief and that a variance was granted previously but that it expired after the required two years and he would like the variance back. He bought the property in 2010 from tax sale.

Gentile read Paragraph 1.3A of the Zoning Ordinance and stated that there are five conditions for a variance which have to be met. There was discussion if Twin Mountain Circle and Cranmore Drive were Class VI roads. Marc Ohlson stated they were not and that they were private roads.

Mr. Byrne stated that he has septic approval from the State of New Hampshire.

Gentile asked if there was any other comment from the public. There was none.

Motion by Ohlson, seconded by Bartlett to close the public hearing for Case #22-11. The motion passed **unanimously**.

Notes on Finding of Fact:

1. The house sits at a 45-degree angle facing two roads which then requires a variance for both dimensions according to paragraph 5.9.D of the Madison Zoning Ordinance.
2. The submitted copy of Tax map 116 refers to lot "12," which is a typo, the application and other documentation correctly refer to lot "15."
3. There is a septic plan in hand which meets necessary state and local setbacks for both property lines and well radius according to the site plan.
4. The required setback from the poorly drained soils is 50 feet according to paragraph 4.5.C of the Zoning ordinance instead of 75 feet, which is required for very poorly drained soil.
5. The roads are private roads, not class 6 roads.
6. The property is in a private development.
7. The lot had a previous variance approval which the owner was informed at the time of purchase by the town that would not expire. This was incorrect and the variance expired.

Findings on the five conditions for a variance:

1. The variance will not be contrary to the public interest
2. The spirit of the ordinance will be observed (answers for both 1 and 2 together):
 - The house is consistent with the existing neighborhood in the size of lot and house, so it fits rather than change the character of the neighborhood.
 - The existence of a DES permit for the septic system shows that building on the lot is no threat to public health.
3. Substantial justice is done because.
 - The lot was purchased for building with an existing variance for this construction. Granting the variance allows the homeowner to do what he intended and was permitted at the time of purchase.
 - The building plan is consistent with the practice on neighboring lots of similar size.
4. The values of surrounding properties are not diminished because
 - A home that fits the neighborhood will raise property values rather than diminish them.
5. Literal enforcement would result in unnecessary hardship because
 - There is no demonstrable gain to the public in denying this request whereas literal enforcement would be significant financial loss to the owner and major inconvenience in having to find a different location for his home.
 - The use of this building lot in a residential community is a reasonable and expected use of the land.

Motion by Doug McAllister, seconded by Rau to approve the variance with no conditions based on the exercised analysis. The motion passed by roll-call vote **5-0**.

Gentile read the procedures of the 30-day appeal period. Gentile closed Case #22-11.

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Shackford read aloud **Case #22-12** – Variances are requested by Ronald Briggs of Briggs Land Surveying as Agent for Mark S. Sherwood and Heather J. Sherwood for property located at 1589 Village Road, Tax Map 117, Lot 061, from Article IV Section 4.5C to construct a house within 12.7’ of poorly drained soil where 50’ is required and within 30.4’ of very poorly drained soil where 75’ is required; and to place a septic tank within 27.7’ of poorly drained soil where 75’ is required and within 63.0’ of a ditch where 75’ is required; and construct a leach field within 27.0’ of poorly drained soils where 75’ is required.

Shackford read the posting information: Posted at Town Hall, Silver Lake and Madison Post Offices on November 1, 2022; Published in the Conway Daily Sun on November 2, 2022 and Certified mailings were sent on November 1, 2022.

Gentile polled the board as follows:

Conflict of Interest: All five board members stated they had no conflict of interest in this case via roll call.

Waiver Request: Ron Briggs of Briggs Land Surveying submitted a Waiver Request.

Motion by Bartlett, seconded by Martin to accept the Waiver Request. The motion passed by vote **5-0**.

Regional Impact: All members stated they see no regional impact in this case via roll call.

Swearing In: Gentile swore in Ronald Briggs, Briggs Land Surveying Agent for Mark S. and Heather J. Sherwood, Mark S. and Heather J. Sherwood, abutters and members of the public. Gentil asked if anyone wished to speak to this case.

Ronald Briggs of Briggs Land Surveying as Agent for Mark S. Sherwood and Heather J. Sherwood presented the septic design which has been approved by NH DES and waivers for leach field and septic. NH DES is comfortable with the minimum of 25’ setback of the poorly drained soil and very poorly drained soil. He further stated that the state has no requirements from wetlands to a structure but that the Town of Madison does. He further stated that an erosion device will be implemented to prevent erosion and that the driveway on the wetlands will be moved.

Ricky L’Heureux an abutter who owns property at 1547 Village Road stated his concern that he has a 15-foot dug well which is approximately 220’ from the proposed leach field and questioned the impact this variance would have to his dug well. He further asked if it mattered if that the wetland was filled. Ronald Briggs stated that the effluent needs 24’ before it hits groundwater and that NH DES did come to the site and investigated. He further stated the well for Jernstrom is approximately 450’ from the leach field and the well for L’Heureux is approximately 200’ from the leach field, and that both are within the required safety margin of 75 feet. Ricky L’Heureux also stated he is concerned about the brook.

Hannah Jernstrom abutters who own property at 1627 Village Road also had concerns for her well as also and asked if the state approved the location of the proposed well. Ron Briggs stated yes.

Rau asked if a separate garage was being built. Mark S. Sherwood stated no that the garage would not be separate from the house.

Gentile asked the abutters to express their concerns or if they opposed. Ricky L'Heureux stated he is concerned as well Hannah Jernstrom stated she is concerned.

Mark S. Sherwood stated that in 1970 the driveway was filled with gravel and there are two ditches that are state runoff.

Gentile asked if there was any other comment from the public. There was none.

Motion by McAllister, seconded by Martin to close the public hearing for Case #22-12. The motion passed **unanimously**.

Notes on Finding of Fact:

1. A DES permit for the septic system with dimensional waivers for the septic tank and leach field is in hand.
2. The abutter to the east has concerns that heavy runoff may occasionally compromise the leach field and carry contaminants to their 25-foot point well approximately 400+ feet away.
3. The surveyor pointed out that this is unlikely as the well is not only uphill, but the bottom of the well is probably higher than the top of the leach field.
4. The abutter to the west has the same concern regarding his 15-foot dug well which is approximately 220 feet from the leach field and 30 feet from the state-owned drainage canal near the property line between their lots.
5. The contours in the area, particularly to the west and north are relatively flat.
6. Portions of the lot were filled in during the 1970's to provide area that was no longer wetland.
7. Construction on the site for the house, septic system, and driveway will all be confined to portions of the lot which are not wetlands.
8. The state has no setback requirements for wetlands, but the town of Madison normally requires 50 feet from poorly drained soil and 75 feet from very poorly drained soil according to paragraph 4.5.C of the zoning ordinance.
9. The plan includes sufficient on-site parking for a two-bedroom house.
10. The owner anticipates raising the level of the driveway and providing additional drainage. The
11. The leach field plan includes having it 6 inches above grade as well as having the required 24 inches of depth. It will thus be above normal levels of surface runoff.
12. The construction plan includes additional drainage around the house.
13. The septic system is designed for 300 gallons per day, a volume which the agent, who is a septic system designer, says is very small in comparison to the volume of water on the lot.
14. The agent worked with the state to position the septic system and house in the best location on the lot, which resulted in changes from the original building plan.

Findings on the five conditions for a variance:

1. The variance will not be contrary to the public interest
2. The spirit of the ordinance will be observed (answers for both 1 and 2 together):
 - The building of a 2-bedroom home along Village Road fits the neighborhood, and is an improvement over the previous use of the lot for a trailer. There is a positive change for the neighborhood.

- The question of public health was the focus of the discussion because the abutters on both sides expressed concern that putting a septic system in low lying land could contaminate their wells. The board discussion in summary:
 - While the question from the abutter to the east is valid, there is very low risk to them for two reasons:
 - Their well is on higher ground than the leach field
 - With over 400 feet between leach field and their well, they are beyond the required safety margin of 75 feet and it is highly unlikely that leach field effluent could flow up to them.
 - The abutter to the west has the same concern,
 - With over 200 feet between the leach field and his well, there is more than the required safety margin of 75 feet.
 - At 300 gallons per day, the volume of effluent processed by the new leach field is insignificant compared to the volume of water flowing through the drainage system between his well and the leach field of concern.
 - Both abutters also expressed concern for the safety of Forest Brook and Silver Lake.
 - The board considered their concerns in light of the data along with the existence of the DES permit for the septic system. The system is above both grade and above normal runoff. The board concluded that the data suggests that the risk to the abutters and the public from potential contamination is very low.
3. Substantial justice is done because
 - This lot was zoned for residential use and purchased for the purpose of building a modest home. Extensive care was taken to select the best location for safe building including special drainage and an appropriately safe septic system. There is minimal risk associated with the construction. The project fits the location and represents an improvement over past usage.
 - There is no substantial gain to the public in denying construction of house which adds to the neighborhood with no impact on public health.
 4. The values of surrounding properties are not diminished because
 - This construction represents an improvement over past usage, thus increasing property values.
 5. Literal enforcement would result in unnecessary hardship because
 - There is so substantial gain to the public in denying the construction on this property while developing the property represents a gain in property values to all, while denying construction would represent a significant financial loss to the owner who purchased the lot on good faith that it is buildable.
 - Use of some of the front acreage for a home in a residentially zoned area is a reasonable use of the land.

Motion by Bartlett, seconded by Rau to approve the variance with no conditions based on the exercised analysis. The motion passed by roll-call vote **5-0**. The motion passed **unanimously**.

Gentile read the procedures of the 30-day appeal period. Gentile closed Case #22-12.

MINUTES: Motion by Bartlett, seconded by Martin to approve the minutes of the September 28, 2022 Special Meeting. The motion passed **unanimously**.

MINUTES: Motion by Ohlson, seconded by Martin to approve the minutes of the October 19, 2022 minutes as amended. The motion passed **unanimously**.

Gentile asked Linda Shackford to follow up with Shawn Bergeron, Agent for Hillary Twigg-Smith, Case # 21-13 and #21-14 to verify if the meeting was going forward.

ADMINISTRATION: Bartlett requested the Abutter Notification Form, Instructions, Item 4., be in bold and capitalized and now be Item 1 with the following added language **“An error in improperly listing all abutters will result in postponement of the hearing”**.

ADJOURNMENT: Motion by McAllister, seconded by Martin to adjourn the meeting. The motion passed **5-0**. Meeting adjourned at 7:45 pm.

Kate Young
Land Use Boards Administrator