



**TOWN OF MADISON  
ZONING BOARD OF ADJUSTMENT  
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**ZBA MINUTES  
May 17, 2023**

**ATTENDANCE:** Chairman Drew Gentile, Vice-Chairman Jake Martin, Doug McAllister, George Rau, Shawn Bergeron, Marc Ohlson, Alternate – Bill Dempster, Alternate – Sharon Schilling

**EXCUSED:** None

**OTHERS PRESENT:** Madison TV, Aysia Morency, Kate Young, Land Use Boards Administrator, Jacob McConkey, Agent for Samuel Shriro and Paul Rigazio

**CALL TO ORDER:** Gentile called the meeting to order at 6:00 PM. Rau led the reciting of the Pledge of Allegiance.

The Board welcomed Sharon Schilling as an Alternate on the Board.

Gentile stated that this is a continued Public Hearing from the April 19, 2023 meeting for **Case #23-03** and Martin is presiding over this case.

Martin, Acting Chairman stated the same five Board Members are sitting tonight and that parties present were sworn in at the April 19, 2023 meeting and stated they are still in the Public Hearing portion and that there have been some revisions to the plan and asked Jacob McConkey to explain.

Jacob McConkey, Agent for Samuel Shriro referred the Board to the plan and revisions to the application and stated they no longer require a variance for the house to the water as they are now 75 feet and they have rotated the house 20 degrees so it is along the zoning envelope with the channel coming through and also managed to keep the septic tank on that side of the house by rotating it and maintaining the five feet off the house so this all meets the Eidelweiss water ordinance restrictions of 25 feet. McConkey further stated they added a drip line trench to the house in the front and back of the house where they will infiltrate underneath the deck that will go underneath the deck also so when it falls through cracks it will come through the infiltration trenches. McConkey stated he believes the revisions have satisfied the board and Rigazio. Martin asked if it was an elevated platform and not a patio? McConkey stated yes, an open deck. Bergeron asked if the deck is at the grade level of the home or the upper level of the home no more than 2 feet above grade? McConkey stated he does not believe it is to be an elevated deck and if this needs a restriction, they would be willing to do this. Bergeron stated that should the variance request be granted it should include a condition to be no higher than two feet.

Findings of Fact

1. There is an inconsequential administrative error in the notification citing paragraph articles 5.9C and 5.9E of the zoning ordinance. 5.9C refers to the rural residential district, but the reference should be to 5.9I, which is identical in requirements except that 5.9I refers to the Eidelweiss district, which is the applicable if identical paragraph.
2. A shared driveway exists, the lots are owned by husband and wife and initially used the lots together, but they were not officially combined.
3. There is an expired variance for a similar dimensional requirement.
4. There is a certified plot plan for the lot, but not for the house.
5. The approval for the septic tank is in hand and it meets all the dimensional requirements.
6. The town shoreline setback is 75 feet, the state is 50 feet, the setback of 75 feet for the deck is not possible due to the lot dimension.
7. The agent provided a survey of the neighborhood setbacks from the road to demonstrate that the position of the home is consistent with characteristics of the neighborhood. Specifically, 11 of 15 homes do not meet the 65 foot setback requirement with an average of 49.4 feet. The requested setback is 49.9 feet, greater than the average of non-conforming homes, five of which are closer to the road. The survey of the lots is included in the record.
8. The abutter to the south, 10 Little Loop, expressed concern about encroachment on the 75 foot setback to the water in particular, which was accommodated in the updated plan.
9. The house will have drip line trenches for storm runoff mitigation.
10. The deck is planned to be a permeable, open structure.
11. The plans are NH shoreline protection act compliant, though the DES shoreline permit is not yet in hand.

Martin asked for a motion to close the Public Hearing.

**Motion** by Gentile, seconded by McAllister to close the Public Hearing. The motion passed **unanimously**.

Martin stated the Public Hearing is closed and the Board will now deliberate on the five criteria.

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):
  - Because granting the variance will not alter the essential character of the neighborhood because the setback to the road is greater than the average of the non-conforming houses, five of which are closer to the road and
  - Because a permeable deck encroaching the 75 foot setback to the water and the house inside the 65 foot setback pose no demonstrable threat to public health or welfare. Thus it does not unduly and to a marked degree violate the objectives of the ordinance.
3. Substantial justice is done because:
  - article 1.3A of the zoning ordinance allows the reasonable development of non-conforming properties which existed prior to 1987.
4. The values of surrounding properties are not diminished because
  - There has been no testimony that the project would harm property values and

- The development of property consistent with the style of the neighborhood usually enhances property values.
5. Literal enforcement would result in unnecessary hardship owing to the special conditions of the property because:
- The unique dimensions of the property make it impossible to build a modest, 2 bedroom home without relief from some of the dimensional requirements of the current ordinance.
  - The development of the property for a modest home is both reasonable and allowed by article 1.3A of the zoning ordinance.

**Motion** by McAllister, seconded by Gentile to grant the variance because substantial justice is done by allowing the building of a modest home on a non-conforming lot consistent with the provision of article 1.3A of the zoning ordinance with two conditions:

- That the deck be no higher than the level of the first floor and
- The deck may not be enclosed or covered which would make it impermeable.

Martin read aloud the provisions of the 30-day appeal period. Gentile closed **Case #23-03**.

**APPROVAL OF DRAFT MINUTES:** **Motion** by Martin, seconded by Bergeron to accept the April 19, 2023 minutes with amendments. The motion passed **unanimously**.

Gentile stated the Board to recognize and thanked Mark Totman for his years of service on the Board.

**ADMINISTRATION:**

Gentile asked if new Alternate, Schilling could introduce herself to the Board and give a little history of her background.

**ADJOURNMENT:** **Motion** by Martin, seconded by Bergeron to adjourn. The motion passed **5-0** and the meeting adjourned at 7:30 PM.

The next meeting of the Zoning Board of Adjustment will be held on June 21, 2023 at 6:00 pm.

Respectfully submitted,

Katharine Young  
Land Use Boards Administrator