



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
June 21, 2023**

ATTENDANCE: Acting Chairman, Jake Martin, Doug McAllister, George Rau, Drew Gentile – via Zoom, Alternate – Bill Dempster, Alternate – Sharon Schilling

EXCUSED: Shawn Bergeron and Alternate – Marc Ohlson

OTHERS PRESENT: Madison TV, Aysia Morency, Kate Young, Land Use Boards Administrator and Henry Moscone

CALL TO ORDER: Martin called the meeting to order at 6:01 PM. Rau led the reciting of the Pledge of Allegiance.

Martin stated there was not a full Board present and the Board would need to elevate an alternate and also swear in Gentile under The Right-to-Know Law, RSA 91-A:2, III.

Gentile stated the reason he could not attend the meeting was that he was in Indiana visiting his daughter.

Martin swore in Gentile and read aloud RSA 91-A:2, III. Martin asked the Board for a motion to permit Gentile to participate via Zoom.

Gentile further stated he is alone and no one else is present.

Motion by McAllister, seconded by Rau for Gentile to appear via Zoom from Indiana.

Roll Call Vote: Martin – aye; Rau – aye; McAllister – aye;

The Motion passed **3-0** by roll call vote.

Martin asked for a motion to elevate Dempster to make the board a five-member voting Board.

Motion by Rau, seconded by McAllister to elevate Dempster as a full voting member.

Roll Call Vote: Martin – aye; Rau – Aye; McAllister – aye, Gentile – aye

The Motion passed **4-0** by roll call vote.

Martin stated they have a quorum.

PUBLIC NOTICE: Notification of this meeting was posted on June 5, 2023 in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices. Young also confirmed Certified mailings were sent on June 5, 2023. The Public Hearing Notice was published in the Conway Daily Sun on June 6, 2023.

Young read aloud **Case #23-06 – Equitable Waiver of Dimension Requirements** is requested by Henry P. Moscone, for property located at 7 Mount Washington Drive, Map 111, Lot 6, from Article V Section 5.9 of the Zoning Ordinance to permit the existing barn to remain where it was constructed.

Martin polled the Board:

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

Roll Call Vote: Martin – aye; Rau – aye; McAllister – aye; Gentile – Aye; Dempster – Aye

Waiver Request: There are no waivers requested by the applicant.

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

Roll Call Vote: Martin – aye; Rau – aye; McAllister – aye; Gentile – aye; Dempster – aye

Swearing In: Martin sworn in Henry P. Moscone, Applicant to **Case #23-06**.

Martin opened the Public Hearing.

Henry Moscone handed out pictures to the Board. He explained the barn is four feet from the sideline and did not realize that when he built the barn in 2004. He stated that the other lot, Lot 16, was still a wooded lot in 2004 and it was hard to tell where everything was. In 2010 he bought the wooded lot and found out the barn was too close but it did not matter at the time because he owned both properties. He is selling Lot 6 with the barn and is keeping the one-acre lot, which is Lot 16. He explained he unknowingly and unintentionally built the barn too close to Lot 16 and he has a buyer to buy the house and the buyer does not care about the barn issue. He further stated that the stakes for the property were mismatched and all over the place at the time he built the barn.

Martin explained that there is a discrepancy between the building application and the actual Certified Plot Plan. The Certified Plot Plan shows the Barn to Sideline as 1.4 feet and on the original Plot Plan with Building Location it is listed as 56 feet and on the North side it shows 75 feet to center road where it now shows on the Certified Plot Plan being Barn to Centerline 44.5 feet and to the cardinal west it shows 15.4 feet and should be 25 feet with a discrepancy of about 10 feet, discrepancy of 55 feet and discrepancy of 30 feet.

Gentile asked when the lots were purchased and when the buildings were constructed. Moscone stated he bought the original lot in 1999 and it was a quarter acre lot (100' x 100') and then in 2003 he bought the second quarter acre lot from the town which then gave him 100' x 200' and this is when he built the barn. He further stated the house was built in 2003 and there was a 24' x 24' cottage which he lived in and in 2010, he got a permit to go up with the second floor. Martin confirmed with Moscone that he constructed the barn in 2005 before he built the second story. Martin asked Moscone if he built it himself. Moscone stated he contracted a person and he worked with the local contractor.

Gentile recapped what Moscone stated as follows:

The original structure was built in approximately 1966 and the original structure was purchased by the applicant in 1999. The original structure was expanded in 2003 and Moscone bought the second lot, Lot 16 in 2003 and he has owned both lots since 2003. In 2005 Moscone got a building permit to build the barn which has inaccurate information. In 2011 the barn had an additional building permit and was expanded. Gentile stated that Moscone has done nothing to the lots since May of 2013 and this application came in 2023 and removes the first two conditions the Board is required to consider for an application. Gentile stated that what this means is when there is an application for an Equitable Waiver, the history of why these issues took place do not make any difference as the town has taken no action whatsoever to inspect or clarify and have made no attempt for any violation and no correspondence to Moscone in the last ten years. The Board still has to consider based on the last two conditions, whether or not they can grant or impose conditions and that the Board can impose conditions on whether the equitable waiver can be granted.

Martin stated that the last two conditions of the Equitable Waiver are the only ones that apply based on the timeline of all properties and buildings that were laid out because it has been more than ten years.

Martin asked the Board if they have read conditions 1-4 on the application and asked if the Board had any more questions. There were none.

Martin asked for a motion to close the Public Hearing.

Motion by McAllister, seconded by Rau to close the Public Hearing for **Case #23-06**.

Roll Call Vote: Martin – aye; Rau – aye; McAllister – aye; Dempster – aye; Gentile – aye; Dempster - aye

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

Preliminary Findings of Fact:

Martin stated that Gentile covered the Findings of Fact with his time table as the original cottage construction was in 1966. Dempster stated Moscone purchased the original lot in 1999. Martin stated that Lots 6 and 7 were combined in 2005. Schilling stated the original purchase of Lot 6 was purchased in 1999 and in 2005 Moscone purchased an additional property from the town which merged Lots 6 and 7 in 2005. Moscone purchased Lot 16 from the town in 2010. Martin stated the barn was constructed in 2005. Dempster stated in 2011 Moscone got the permit for the addition of the second story to the cottage. Martin stated since 2005 there is no notice by the municipality of any violations and when Moscone purchased Lot 16 in 2010, there was still no notice to Moscone of any violations. Dempster stated that the applicant is looking to sell the property. Martin stated if the Board was to grant the Equitable Waiver, the Board can put conditions on it.

Gentile made a suggestion that the Board could grant an Equitable Waiver based on the condition that a lot line adjustment be made so there is a setback from the barn of 15 feet. He further stated that neither Lot 6 or 16 are independently two acres and his recommendation is the 15 foot lot line adjustment and that this would need to go to the Planning Board for approval. Gentile stated the Board could continue this case.

Gentile made another possible suggestion to possibly change the deed to reflect a no build zone with a specific amount of footage. He further stated that the Board would need to get legal advice.

Motion by McAllister, seconded by Rau to continue **Case #23-06** to the July 19, 2023 meeting to obtain legal advice from legal counsel on decision to no a build zone on Lot 16.

Roll Call Vote: Martin- aye; Rau – aye; McAllister – aye; Gentile – aye; Dempster – aye

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

APPROVAL OF MINUTES:

Motion by McAllister, seconded by Rau to accept the May 17, 2023 minutes as written.

Roll Call Vote: Martin – aye; Rau – aye; McAllister – aye; Gentile – aye; Dempster – aye

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

Motion by McAllister, seconded by Rau to accept the May 31, 2023 minutes as amended.

Roll Call Vote: Rau – aye; McAllister – aye; Gentile – aye, Dempster – aye;

The motion passed by roll call vote **4-1** with Martin abstaining because he was not actually present at the May 31, 2023 to make the motion to adjourn the meeting when in fact, it was Dempster that made the motion. This was a clerical error by the Land Use Boards Administrator.

ADMINISTRATION: There was nothing to report.

ADJOURNMENT: Motion by McAllister, seconded by Rau to adjourn the meeting at 6:49 pm.

Roll Call Vote: Martin – aye; Rau – aye; McAllister – aye; Gentile – aye; Dempster - aye

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

The next meeting of the Zoning Board of Adjustment will be held on July 19, 2023 at 6:00 pm.

Respectfully submitted,

Katharine Young
Land Use Boards Administrator