

**Zoning Board of Adjustment
Town of Madison
PO Box 248
Madison, NH 03849**

**Minutes
January 20, 2016**

Members Present: Henry Anderson, Ken Hughes, Stuart Lord, Mark Lucy, and Hersh Sosnoff

Members Not Present: Kevin O'Neil

Staff Present: Bob Boyd – C.E.O., Chris Young – Land Use Boards Administrative Assistant

Others Present: Joseph Farnese, Brian Barrington – Lawyer

Hearing Notice Posted: 1/6/16 at Madison Town Hall, Madison Post Office, and Silver Lake Post Office; Abutter Notice's Posted 1/6/16; corrected Abutter Notice's Posted 1/13/16; Conway Daily Sun 1/12/16

1. **CALL TO ORDER:** Mr. Lucy called the meeting to order at 6:05 PM.
2. **PLEDGE OF ALLEGIANCE:** Mr. Hughes led the assembly in the pledge of allegiance.
3. **ROLL CALL:** Mr. Young called the roll.
4. **NEW HEARINGS:** Mr. Young introduced case 16-01 from Joseph Farnese, a rehearing of case 15-10's Appeal from an Administrative Decision. Mr. Young also gave account of how personal and public notices were given.

Mr. Lucy polled the board for conflicts of interests and found none. Mr. Lucy asked if there had been a waiver request, and there had not been one. The case was evaluated for regional impact, and it was not considered to be of regional impact by the board members.

Mr. Lucy read through the rules of procedure, explaining them to all present and to the benefit of those watching on Madison TV. Mr. Young was then asked for the packet that he had prepared and they were distributed to the board members, the applicant's lawyer, the C.E.O., and copies were available for the public. Mr. Lucy brought attention to the wetlands delineation map from an earlier hearing on the property that was in the packet and explained that it was being introduced as a cleaner plan for people to see what was happening than the plans submitted.

Mr. Barrington was sworn in to speak at the hearing, and he was given five uninterrupted minutes to begin his case. Mr. Barrington clarified that the records from the previous hearing (case 15-10) were also considered as part of this hearing's records and then went into the reasoning of why this rehearing was necessary. Mr. Farnese was asked to file a building permit for a wall and a dock ramp. The wall was exempt from this as it was not a retaining wall. Any wall, including a natural stone wall, required some preparation for the

site of its construction. Mr. Barrington went on to define the ZBA as being quasi-judicial powers. Mr. Lucy countered that it was judicial. Mr. Barrington went on to the requirement of getting a building permit to put up a dock and a ramp to the dock. These are under the jurisdiction of DES. Mr. Barrington then referred to the Wilton case which had been included in his letter requesting a rehearing. The Wilton case had decided that walls were not part of zoning. Mr. Barrington continued to outline the parcel as an accessory of the main lot across the road where the house was.

Mr. Lucy asked Mr. Barrington to define exactly what was being appealed. Mr. Barrington responded that they are appealing the denial of building permit for a stone wall based on it violating the 75' setback. Mr. Lucy wondered why a building permit was filed. Mr. Barrington responded that the C.E.O. had requested it and it is common for walls to be inspected for safety concerns. Mr. Lucy questioned whether that was all that was being appealed. Mr. Barrington also explained that footings for a ramp to the dock were also part of that permit and had been subjected to the setback. Mr. Lucy asked if there was anything else. There was not. Mr. Lucy then clarified with Mr. Farnese the different permits and which were issued together or separately. A separate permit had been filed for the Gazebo and electric work. The pervious patio and fireplace did not require a permit. A permit was also obtained to place a concrete slab. Mr. Farnese showed where these items were on a map for all to see. Mr. Lucy read the two DES permit file numbers for the project. Mr. Lucy made a distinction between woodland setbacks which are regulated by DES and wetland setbacks which are done by the town.

There was a discussion of the culvert drain pipe which entered into Mr. Farnese's property and how it was originally a 12' pipe that had been resized to a 25". Mr. Farnese has been in discussion with Eidelweiss about this.

Mr. Barrington pointed out that DES with all its specialists had approved this plan and Mr. Farnese will be improving the property by planting wetland vegetation into an area that has been made a wetland.

Mr. Lucy gave Mr. Boyd a chance to explain what happened. Mr. Boyd gave a summary of a timeline that had been prepared for the hearing is part of the record. After receiving a complaint, Mr. Boyd had found two parallel footings running along the northern side of the property with level fill in between. A letter was sent out to Mr. Farnese telling him to cease and desist until he had explained what was happening to Mr. Boyd. Construction did not stop even after an agreement was made while Mr. Boyd looked into whether the wall and other parts of the project needed a permit or not. Mr. Boyd took this subject up with the selectmen in September and was referred to the town lawyer. It was decided that the wall and the walkway would need a permit. The permit application came in late from Mr. Farnese. After reviewing the application, it was denied.

Mr. Lucy asked Mr. Young if the Conservation Commission had approved this project. Mr. Young responded that the commission had not made any comment on the project. When a Conservation Commission does not make any comment it is considered to be an approval by DES. Mr. Lucy asked Mr. Young and Mr. Boyd if there was a definition of "stone wall" or "bridge" in the town ordinances. There was none. Mr. Lucy assessed the case as coming down to the question of who interpreted the definition correctly. Mr.

Sosnoff began a discussion of what the definition of a structure is. The board examined several definitions of "structure" from past years of the Madison Zoning Ordinance. Minutes from a Planning Board meeting of June 7, 1989 were also read in which the topic of fences had come up. A letter was also read from that same time period from Larry Monet describing his efforts to find ordinances for fences and stone walls. He was unable to find any such ordinances. Mr. Lucy also read the minutes of the March 1, 1995 Planning Board in which Mr. Ohlson objected to the changes made to allow bridge supports in the wetland district as any change would affect the wetland.

Mr. Barrington voiced the concern that the focus of the hearing should be on the flaw of applying a 75' setback and a 25' setback on the wall. Mr. Boyd raised the concern that "stone wall" is open to interpretation. Mr. Lucy raised the question of who is harmed by this wall. There was a short discussion on this followed by a motion from Mr. Anderson to close the hearing and enter into deliberation. The motion was seconded by Mr. Sosnoff, and the motion passed. A five minute break was called at this time, 7:50PM.

At 7:55 the hearing was called to order again. Mr. Lucy asked for comments from the board. Mr. Lord commented that the C.E.O. was correct in making his decision as the definition is fuzzy to bring the issue to this board's attention. Mr. Hughes brought attention to the definition of structure using the word "block" as supporting the C.E.O. with the understanding that stone walls are made from stones as seen in the field, but case law (Wilton case) indicated otherwise. "We're wrong no matter what we do." A variance would be the best way to meet all concerns. Mr. Sosnoff supported the C.E.O. and saw this wall as a manufactured cement block wall. He went on to suggest the board rescind the permit for the gazebo and concrete pad, and cited RSA 674:33 II to support the board having those powers. Mr. Anderson commented that stone walls and fences are exempt and there is no definition of fence or stone wall. The owner interpreted the ordinance from his understanding. Mr. Lord presented the view that the presence of concrete warrants intervention. Mr. Lucy came back to his original question, "who is harmed here?" As the definition of stone wall is undefined and a block of concrete is in large part made of stone, and considering that the plans of Mr. Farnese are an improvement on the property, Mr. Lucy was in favor of granting the appeal. Mr. Lord considered the question to be more about whether the C.E.O. made the correct decision. Mr. Hughes commented on his agreement with the C.E.O. and that he was also going ahead with what Mr. Lucy said because case law indicated that the town would be sued; "no matter what we do it will be wrong!" Mr. Lucy moved that the board overturn the administrative decision without prejudice. The motion was seconded by Mr. Hughes, and the motion passed, (4-1). Mr. Lucy read the appeal process.

5. CONTINUED HEARINGS: Mr. Sosnoff moved to reopen case 15-10 and close it without finding, seconded by Mr. Hughes. The motion passed and Mr. Lucy did not take part in the vote.

6. APPROVAL OF MINUTES: Mr. Hughes brought up an inconsistency that in item 4 continued hearings, there were two motions to reopen the hearing by Mr. Sosnoff. The second one on line 6 should be a motion to close the hearing. Mr. Lucy moved, seconded by Mr. Sosnoff, to accept the minutes as amended.

7. **OTHER BUSINESS & COMMUNICATIONS:** Mr. Young brought up an offer from the Zoning Board's Attorney to come give a workshop on recent changes in municipal law. Mr. Young had contacted the Planning Board and they had suggested any first Wednesday of the month. Looking at the calendar, the board considered May 4 as a possible date. Mr. Young will contact the Attorney and see if that will work in his schedule.

8. **ADJOURNMENT:** Mr. Lucy adjourned the meeting at 8:26PM.

Respectfully submitted,

Chris Young
Land Use Boards Administrative Assistant

Minutes Approved: March 16, 2016

Corrections:

Page 3, 2nd paragraph, 1st line – typo repetition of "that"