

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

**Minutes
July 16, 2014**

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

Members Not Present: Kevin O'Neil

Staff Present: Chris Young – Land Use Boards Administrative Assistant

Others Present: Jeremy Eggleton – Pomeroy's Agent, Edward Alkalay – representing Thomas & Margaret Ettinger (Ettingers), Peter Leonard, Dick Martin, Ben Pomeroy, and Frona Vicksell

Meeting Agenda Posted: 7/2/14 at Madison Town Hall, Madison Post Office, and Silver Lake Post Office; Conway Daily Sun 7/8/14

1. **CALL TO ORDER:** Mr. Lucy called the meeting to order at 7:05 PM.

2. **ROLL CALL:** Mr. Young called the roll.

3. **NEW HEARINGS:** Case 14-05 Peter Leonard

Mr. Lucy asked Mr. Young to introduce the case and state what notifications had been given for the case. Mr. Young read the description from the notice. This application is for a variances from Zoning Ordinance 5.9.E requiring a setback from the center of the road of 65' and from side lines of 25'. Notices had been posted in the Madison and Silver Lake Post Offices, as well as on the two bulletin boards in the town hall on July 2. Letters were also mailed to the abutters by certified return receipt mail. All but one of them had been returned.

Mr. Lucy polled the board for conflicts of interest and found none. Mr. Young was asked if there were any waivers submitted for this application and there were none. The board was asked if they found any waivers and they also found none. Mr. Lucy moved, seconded by Mr. Sosnoff, to accept the application as complete. The motion passed. None of the board members felt the case was of regional impact. Mr. Lucy swore in all those intending to speak.

Mr. Leonard was then given five uninterrupted minutes to begin his case. Mr. Leonard explained that he had taken the project to Thaddeus Thorne Surveys, Inc. to have them engineer the best placement for a house given the steep grade of the site. Their response was the plan that was submitted with the application. Mr. Lucy asked for the dimensions of the house and was told 26' by 36' with an 18" overhang. There was some discussion about whether the house could be centered instead of off to one side, but it was shown to be impractical with the steep slope off of the far side. The floor was opened to anyone speaking in opposition, and there was no one.

Mr. Lucy gave the following summary:

- The applicant is requesting to place a house in the Eidelweiss Residential District, Map 104 Lot 91
- Building footprint is 26' by 36' with the length paralleling Oak Ridge Road. The house will have a roof overhang of 18".
- Deck on East side
- Typical of the neighborhood, street setbacks are greater than houses in the immediate neighborhood.
- House setback from center of road appears to be 40'6" and 40'3" to roof overhang; zoning requirement is 65' from centerline to structure.
- Distance from side lot line is 13.8' (13'9"); whereas the zoning requirement is 25'
- Slope of terrain is substantial
- House, driveway, effluent has been sited on most reasonable portion of the lot

Mr. Lucy moved, seconded by Mr. Bisio, to go into deliberation. The motion passed. All agreed to adopt the summary as findings.

The five point test

1. The variance will not be contrary to the public interest:
Public interest will be served given the lot has been on the tax rolls since the 1970's. If the variance is granted, the tax revenue will be greater than it ever has been.
2. The spirit of the ordinance is observed:
This is a difficult lot where the house and infrastructures are being placed on the most logical spot on the lot. The variance procedure is in place for lots just like this.
3. Substantial justice is done:
The parcel is zoned building residential, has been taxed, and there is no neighborhood objection
4. The values of the surrounding properties are not diminished:
The construction of this house will not diminish the values of the surrounding properties and might increase them.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Unnecessary hardship means:
Because of special conditions of the property that distinguish it from other properties in the area:
 - (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property:
The uniqueness of this lot is its topography, that it is vacant and will remain so without a variance. Granting the variance brings it into conformity and allows it to be used.

- (b) The proposed use is a reasonable one:
The proposed use is allowed and reasonable

A vote was called for approving this variance and the decision was unanimously in favor. Mr. Lucy read the instructions for the appeal process and the case was closed.

4. CONTINUED HEARINGS: Pomeroy Limited Partnership (case 14-03)

This appeal from an administrative decision was continued from the May meeting. Mr. Lucy swore in the new members of the audience that would be speaking this evening in regard to this case.

Mr. Lucy pointed out that there was no representative for the Town of Madison Board of Selectmen. When asked if any abutters were present, Mr. Alkalay presented himself as substituting for Peter Malia's as representation for the Ettinger's. Mr. Lucy showed how the hearing had gone up to step number seven on May 21, and that had been a good stopping place for continuing the hearing at a later date.

7:23 the hearing was reconvened. Mr. Lucy then established who was sitting on the board on the 21st. There had only been four members serving on the board, Mr. Anderson, Mr. Hughes, Mr. Lucy, and Mr. Sosnoff. Mr. Lucy left it up to the applicant to decide on whether a fifth member should be appointed. The Applicant chose to have a fifth member appointed. Mr. Lucy assigned Mr. Lord to the board for the case.

At this point, Mr. Alkalay brought to the attention of the board that he was there to represent Mr. Malia in his request for a continuation as he had conflicting appointments. Mr. Lucy was given the letter requesting the continuance and he read it to the members.

Mr. Lucy was inclined to listen to the applicant as they did not live in Madison year round. Mr. Lucy clarified that he did want to hear legal issues, only the applicant's view. The two attorneys were asked what they thought about that. After some discussion, it was decided that as long as speakers kept away from legal arguments it would be acceptable. Mr. Pomeroy was then given the floor to present his personal perspective. Mr. Pomeroy described the decision making process that had gone on of the immediate issue.

Specifically that an agreement had been reached with the selectmen and the building permit had been granted with the condition that some legal waivers be created. This was then reversed after the waivers had been created and sent to the ZBA. The use of the property was also described. Mr. Pomeroy went on to describe the history of the road maintenance agreement and how it had changed over the years. Mrs. Vicksell added comments about the verbal agreement made in the 1990's on the road maintenance. Mr. Pomeroy went on to comment that large trucks were able to regularly make deliveries and turn around at the Pomeroy's residence. The right of way has also recently been worked upon. A round trip drive from the Pomeroy's residence to route 113 now takes about 14 minutes. Several board members stated that they had driven down the road recently and were impressed with the new condition of the road.

Mr. Lucy moved, seconded by Mr. Lord, to continue the hearing at the next regularly scheduled hearing, August 20th. The motion passed. Materials from the applicant, lawyers, and other parties need to be submitted by July 30.

5. **APPROVAL OF MINUTES:** Mr. Sosnoff had a few corrections on the second page. The first point in the summary should have a **period** in the second line after "...family

use". A new sentence should then start with "**The applicant requests...**". An "**a**" needs to be inserted before "**septic system**" as well. In the third point of the summary, the words "**where as**" should be joined to be "**whereas**". In the last line of item 6, OTHER BUSINESS & COMMUNICATIONS:, the Village District of Eidelweiss (VDOE) should not be notified "**as abutters**". The line should be changed to "**...notify the VDOE of future cases in their district.**" Mr. Sosnoff moved, seconded by Mr. Bisio, to accept the minutes with the above changes. The motion passed with Mr. Lucy abstaining.

6. OTHER BUSINESS & COMMUNICATIONS: Letter from Peter Malia shared in case 14-03. At this point, Mr. Hughes made a request to go into non-public session. Mr. Lucy RSA 91-A:3.II.(e) and then asked each board member for their vote. It was a unanimous decision to go into non-public session. At 8:33 PM the Zoning Board of Appeals (ZBA) entered a non-public session. At 8:52 PM the ZBA closed the non-public session and entered a public session. The board discussed issues of privileged nature. A motion was made to seal the minutes of the non-public session. The motion was seconded and it passed unanimously.

7. ADJOURNMENT: The meeting was adjourned at 8:58 PM.

Respectfully submitted,

Chris Young
Land Use Boards Administrative Assistant

Minutes Approved: not yet approved
Corrections: