

**MADISON ZONING BOARD
APPROVED MINUTES
October 19, 2016**

CALL TO ORDER: Mr. Lucy, Chair, called the meeting to order at 6:00 P.M.

PLEDGE OF ALLEGIANCE: Mr. Lucy led those assembled in the Pledge of Allegiance.

ROLL CALL: Mrs. King called the roll.

ATTENDANCE:

Mark Lucy, Chair – Present

Stuart Lord, Vice-Chair – Present

Ken Hughes – Present

Henry Anderson – Present

Hershel Sosnoff – Present

Mark Totman, Alternate – Present

Kevin O’Neil, Alternate – Excused

Staff Present: Colleen King- Land Use Administrator,

Others Present: Attorney Christopher Meier, Greyson and Jennifer Merrill,

Ron and Charlene Rossetti

POSTING DATES & LOCATIONS: 10/5 at Madison Town Hall and Lower Level, Madison Post Office, and Silver Lake Post Office, Conway Daily Sun (10/07/16)

REQUEST FOR RE-HEARING CASE # 16-04

Mr. Lucy stated that a Public Hearing convened on September 21, 2016 and a ruling was made. However, the abutter’s notice which was sent out had a Scribner’s error and listed the wrong meeting time.

MOTION: Mr. Lucy made a motion to grant the re-hearing; seconded by Mr. Hughes. All in favor; no discussion. **Motion passed 5-0.**

POLLING FOR CONFLICT OF INTEREST/ SEATING OF ALTERNATES:

At the last meeting, Mr. Lucy elevated Mr. Totman to a full member for Case # 16-04, in the absence of Mr. Sosnoff. Mr. Sosnoff was present tonight but stepped down so the same board members could hear Case #16-04.

Mr. Lucy reviewed that none of the Board Members had any conflicts last month and again polled each Board Member for any conflict of interest issues with this case.

All members stated that they had no conflict and Mr. Totman joined the Board.

CASE #16-04

At Mr. Lucy's request, Mrs. King read the application Case #16-04 into the record and reported on how public and personal notice was given.

Attorney Christopher Meier, agent for Terrance Hurd, of 19 Middle Shore Drive, Tax Map 105/Lot 117, in the Village District of Eidelweiss, filed an Appeal of Administrative Decision for property located at 17 Middle Shore Drive, Tax Map 105/Lot 118 and owned by Greyson and Jennifer Merrill.

WAIVER REQUESTS

Mr. Lucy asked Mrs. King if any waiver requests had been submitted.

There were none submitted as this case is an Appeal of Administrative Decision.

The July 27, 2016 renewal of a previous building permit is being appealed.

REGIONAL IMPACT

Mr. Lucy asked each Board Member if this case had any regional impact.

The Board Members individually stated that there was no regional impact.

RULES OF PROCEDURE/ SWEARING-IN

Mr. Lucy confirmed that the applicant/agent had received the ZBA Rules of Procedure and Atty. Meier stated that he was fully aware of the ZBA Rules of Procedure.

The Rules of Procedure state that the appeal period is counted as 30 calendar days.

Mr. Lucy asked anyone in the audience who wishes to speak or is party to this case, to stand, state their name and be sworn-in.

Mr. Lucy explained the procedure: the applicant/agent would have up to 5 minutes to speak uninterrupted and present their case and after the 5 minutes, any member of the Board could interrupt for clarity.

-Attorney Meier introduced himself as the representative for the applicant and stated that any Board Member could interrupt at any time during his 5 minutes.

-Atty. Meier explained that his client is an abutter on one side of the lot in question, with a Village District beach abutting on the other side of the lot in question. There is a building proposed on the lot.

-Mr. Lucy questioned Atty. Meier's use of the word 'proposed' building, as there is already a building foundation in place.

-Atty. Meier thought that the foundation was built in 2003 and there may be a septic system installed but did not know the date or if it was functioning.

- Mr. Lucy requested that facts be presented, not hearsay and reminded Atty. Meier that he, (Atty. Meier) invited the Board to interrupt at anytime. Atty. Meier agreed.

-Atty. Meier stated that Board previously denied their Appeal on the grounds of untimely filing and stated that this was a 'Threshold Issue', which he wanted to address first.

-Mr. Lucy asked Atty. Meier what was the 30th day following the renewal of the building permit and he answered that it was Friday August 26, 2016. Mrs. King confirmed.

-Atty. Meier stated that the application was hand-delivered on Monday August 29, 2016.

- Mr. Sosnoff cited RSA 677:2 as specifically stating that the appeal period is 30 calendar days, not 30 business days.
- Atty. Meier agreed that RSA 677:2 states 30 calendar days.
- When questioned by Mr. Lucy about whether an appeal application should be accepted if it had been postmarked on the 30th day, Atty. Meier stated it should not be accepted and a mailing issue is different. The application was hand-delivered on the 33rd day.
- When Atty. Meier was asked when did he realize that Town Hall was closed on Fridays, he answered that he has always known that Town Hall is closed every Friday.
- Atty. Meier stated that it was attorney/client privilege as to when and what date they decided to file on.
- Mr. Lord referenced RSA 21:35 and stated that every Friday is not a legal holiday in Madison. He looked up the definition of holiday which states ‘a day of religious importance or historical events’. Every Friday is not one of those.

Mr. Lucy moved that the Board first make a decision on this Threshold Issue, which was introduced by Atty. Meier.

MOTION: Mr. Lucy is not convinced that the appeal was filed in a timely manner and moved that the Board deny the Appeal on that basis; Mr. Hughes seconded.

DISCUSSION BY THE BOARD

- Mr. Sosnoff reiterated that RSA 677:2 specifically states 30 calendar days.
- Mr. Lord cited RSA 21:35 stating that 30 calendar days, unless a Saturday/Sunday/Legal Holiday. Friday is not a legal holiday, or a Saturday or a Sunday and Town Hall has been closed on Fridays for a long time.
- Mr. Lucy stated that the record shows that the applicant’s agent Atty. Meier was aware that Town Hall is not open on Fridays.
- Mr. Lucy stated that had the application had been postmarked prior to the closing of the appeal window, the application would have been accepted and received in a timely manner. Atty. Meier chose to hand-deliver it 3 days late.
- Mr. Anderson, a ZBA member for 29 years, agreed with Mr. Lucy’s statement.
- Mr. Hughes agreed that the 30 calendar day window needs to be strictly enforced.
- Mr. Totman agreed with fellow Board Members.

VOTE ON THE MOTION: Unanimous vote **5-0 to Deny** the Appeal of the Administrative Decision on the basis of untimely filing, pursuant to RSA 677:2 and reiterated in the Madison Zoning Board of Adjustment Rules of Procedure. The action of the Building Inspector is upheld.

Mr. Lucy recapped the following actions of the Board:

1. At the September 21, 2016 ZBA meeting, the Appeal was denied with a 5-0 vote, on the basis of untimely filing.
2. The Board granted a Re-Hearing request on October 19, 2016, which is the first step in the appeal process.
3. Immediately upon granting the Re-Hearing request, the Board reheard the Appeal. This second step also occurred on October 19, 2016 and the Board Members unanimously voted 5-0 to deny the Appeal.

4. Mr. Lucy stated that all Board Members are advised to refrain from discussing this case with any other Board Member and any and all parties of the Appeal until the appeal period has expired.
5. This case is closed.

Atty. Meier stated that he has more information to present and asked that he be allowed to speak on his client's behalf. Mr. Lucy questioned why this information was not included in the Application and reminded Atty. Meier that it was he who waived his right to an uninterrupted presentation and that it was he who introduced the procedural grounds of the Threshold Issue of untimely filing. Atty. Meier agreed that he introduced this Threshold Issue which needed to be resolved first. Mr. Lucy stated that the Board acted on this Threshold Issue first. After hearing testimony and discussion, the Board made a Motion on this Threshold Issue and voted to deny on the basis of untimely filing. Therefore, there was no need for further discussion. Atty. Meier stated that although the Board has the right to vote on that procedural issue, he had more information from his client. Mr. Lucy reiterated that no additional information can be discussed and re-read his previous statement that 'all Board Members are advised to refrain from discussing this case with any other Board Member and any and all parties of the Appeal until the appeal period has expired. This Case is closed.'

Atty. Meier then requested that the case be reopened so he could present his additional information and said this Board could decide to re-open this case. Mr. Lucy objected that this case could be re-opened and this case is closed from further discussion. He again stated that Atty. Meier brought up the Threshold Issue, which the Board voted on. Mr. Lucy instructed him to hand the additional information to Mrs. King.

CASE #16-05

At Mr. Lucy's request, Mrs. King read the application Case # 16-05 into the record and reported on how public and personal notice was given.

-Kenneth and Charlene Rossetti, 24 Jungfrau Road, Tax Map 109/ Lot 163, in the Village District of Eidelweiss, for a Variance pursuant to the Madison Zoning Ordinance Article V, Section 5.9.E, to permit a proposed 4 foot deck expansion which will extend within 61 feet from the center line of Appenval Way, where a 65 foot setback is required.

CONFLICT OF INTEREST

Mr. Lucy polled the Board Members individually if they had any conflict of interest with this case. All Board Members individually stated that they have no conflict of interest. Mr. Sosnoff returned to the Board to hear this case, relieving alternate Mr. Totman. A full 5 member board will hear this case.

WAIVER REQUESTS

-Mr. Lucy asked Mrs. King if any waiver requests had been submitted; none submitted. The applicant did submit a site plan with their application. There was some discussion on the actual address of this corner lot. Jungfrau is their physical 911 address and that would make the other road a side lot line. However, their driveway is on Appenval Way.

-Mr. Anderson cited the Zoning Ordinance 5.9 D page 20.

- Mr. Sosnoff commented that the front of the house faced Jungfrau.
- Mr. Lucy needed to determine whether this application needed a Variance and asked who prepared this site plan. Mrs. King stated that the applicant prepared the plan.
- Mr. Lucy then sworn-in the applicants.

SWEARING-IN

Mr. Lucy asked anyone in the audience who wishes to speak or is party to this case, to stand, state their name and be sworn-in.

WAIVER REQUEST (cont.) / RULES OF PROCEDURE

- Mr. Lucy asked the applicant, Mr. & Mrs. Rossetti, how did they determine the dimensions and setbacks and did they stand in the middle of the roadway to measure.
- Mr. Rossetti stated that the measurements were taken from the middle of the Appenval Way.
- Mr. Lucy pointed out that the site plan presented shows the distance measured from one quarter width of the roadway and that the centerline of the roadway is identified as 'cl'.
- Mr. Lord stated that the map is drawn incorrectly and Mr. Lucy concurred.
- Mr. Sosnoff pointed out that site plan is 33 years old and a current site plan with today's fact would be more acceptable.
- Mr. Lucy confirmed that the applicant did not request a waiver from the plot plan requirement and asked if they received the Rules of Procedure.
- Mr. Rossetti confirmed that Mrs. King went over the Rules of Procedure with them but they did not think that the waiver applied to them.
- Mr. Lord requested clarification on where the front of the house is because the side and front setbacks are different.
- Mr. Lucy referenced Zoning Ordinance 5.9.D for corner lots fronting on two roadways, the front setback will be imposed as if the lot fronts on one roadway, meaning that which the front of the house faces. Mr. Lucy stated that Appenval Way is the front for this dwelling even though the 911 address is on Jungfrau. Mr. Lucy asked if the Board should proceed.
- Mr. Sosnoff stated that a new survey is needed and Mr. Lucy agreed as this current plot plan is over 30 yrs old.
- The applicant Mr. Rossetti commented that a new certified plot plan would benefit them in the end.

MOTION: Mr. Lucy motioned that this hearing be continued to allow the applicant to obtain a certified plot plan and that it be continued until the next available meeting date at which the application will present a certified plot plan. Mr. Sosnoff seconded.

DISCUSSION BY THE BOARD: Mr. Lucy stated that the Board understands that this may not be resolved by the next month's meeting and may need to be continued to a later date. All agreed that there is no date certain. No further discussion.

VOTE ON THE MOTION: Unanimous vote **5-0 to continue** Case #16-05 to a future date when a certified plot plan can be obtained; no set date stated. Mr. Lucy requested and the applicant agreed to notify Mrs. King by November 2, 2016 if they wish to be on the November agenda.

OTHER BUSINESS

PUBLIC COMMENT :

Mr. Greyson Merrill requested that the information submitted late for the previous hearing, be dated with today's date, (October 19, 2016) and Mrs. Merrill asked if they could get copies of the papers submitted. Mr. Lucy stated that this public record and that she should see Mrs. King for copies.

APPROVAL OF SEPTEMBER 21, 2016 MINUTES: Draft Minutes were reviewed and edits made. Mr. Lucy made a motion at approved the minutes as amended; seconded by Mr. Hughes. All in favor; **Motion passed 5-0.**

OTHER BUSINESS & COMMUNICATIONS

ZONING ORDINANCE WORDING

Mrs. King reported that she and Mr. Boyd have been extremely busy and have not had time to review possible changes. They are planning to have some definitions clarified and which will be emailed to the Zoning Board for input prior to submittal to the Planning Board. Mr. Lucy requested that the definition of a 'stone wall' be addressed and Mrs. King assured the Board that a 'stone wall' definition is a priority.

2016-2017 DRAFT BUDGET: Mrs. King provided a current draw-down of the 2016 budget and the 2017 line items were discussed. Mr. Lord stated that some of these dollar amount are unpredictable and if our budget is in line now, that the same amounts should be used for 2017. Mr. Lucy reviewed each line item. Mr. Sosnoff stated that the only liability is the legal line item as it is an unknown, which cannot be controlled. Mr. Lucy asked Mr. Sosnoff who is also a member of the Budget Committee, if there is any comment on the Zoning Budget. Mr. Sosnoff represents with Zoning Board. Mr. Lucy asked for consensus and to submit the same budget to Sue Stacey.

ZBA RULES OF PROCEDURE:

The second reading of the Rules of Procedure was held and Mrs. King reported that the amended copy dated 8/17/16 has been filed with the Town Clerk, posted on the Town webpage and all Board Members have a copy.

ADJOURNMENT OF PUBLIC HEARING

Mr. Lucy made a motion to adjourn.
All in favor; meeting adjourned at 7:12pm

Respectfully Submitted,

Colleen King
Land Use Boards Administrator

NOTE: These minutes were approved at the November 16, 2016 ZBA meeting.