



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
PO BOX 248
MADISON, NEW HAMPSHIRE 03849
planning@madison-nh.org**

Phone: 603-367-4332 x302 Fax: 603-367-4547

**ZBA APPROVED MINUTES
DECEMBER 20, 2017**

CALL TO ORDER

Chairman Lucy called the meeting to order in the Town Hall meeting room at 6:01pm.

PLEDGE OF ALLEGIANCE

Mr. Hughes led those in attendance in the Pledge of Allegiance.

ATTENDANCE

Mrs. King called the roll:

Mark Lucy, Chair - Present.

Stuart Lord, Vice-Chair - Present.

Ken Hughes - Present.

Henry Anderson - Present

Mark Totman - Present.

Melissa Arias, Alternate - Excused

Bebe Bartlett, Alternate - Present

Kevin O'Neil, Alternate - Excused

OTHERS PRESENT

Colleen King - Land Use Administrator, Carol Dandereau - Madison TV, Bob Boyd - Madison Code Enforcement Officer, Attorney Christopher Meier, Chris Connolly, Attorney Peter Malia, Mark and Teresa Richey, Richard Bertman, Wesley Smith, Steve Larson, Joanna Lucy, Marge MacDonald and Mac MacDonald.

ZBA CASE 17-06

Mrs. King read the case into the record: Attorney Christopher Meier, agent for applicants R. Kevin, Christopher, and Kelly E. Connolly, 585 East Shore Drive, Tax Map 135/ Lot 7, for an Appeal of an Administrative Decision pursuant to the Madison Zoning Ordinance 1.3B and relating to a Building Permit issued on property owned by Mark and Teresa Richey and located at 599 East Shore Drive, Tax Map 135/ Lot 8.

HEARING NOTICE

Mrs. King reported that this Appeal was posted on December 7, 2017 in the Conway Daily Sun Newspaper, Madison Town Hall (upper and lower levels), the Madison and Silver Lake Post Offices with all abutters notified by certified return receipt. There was no written correspondence received for this case.

CONFLICT OF INTEREST

Mr. Lucy polled each Board member present for any conflict of interest with this case. There were no conflicts of interest and a full Board heard the Appeal. Mrs. Arias, Alternate Board Member, recused herself and did not receive any meeting packet or information on this case.

WAIVER REQUEST/ REGIONAL IMPACT/ RULES OF PROCEDURE

There were no Waiver Requests for this Appeal.

Mr. Lucy polled each Board member and each member stated that there was no regional impact with this Appeal.

After Mr. Lucy reviewed the ZBA Rules of Procedures, he swore-in anyone in the audience who may wish to speak on this Appeal.

APPEAL OF ADMINISTRATIVE DECISION

Attorney Meier, agent for the applicant, presented their Appeal. He agrees that this property is grandfathered as a pre-existing, non-conforming structure and has the right to expand under the Ordinance; however, their disagreement is with the property owner's surveyor and how much they get to expand under the ordinance.

Currently there is a 1984 sf camp with an 826 sf attached garage for a total of 2310 sf.

Atty. Meier presented a plan of the proposed expansion, which measures 6856 sf.

The 1st page of plan states that the residential gross floor plan is:

- 2759 sf in the basement,
- 3364 sf on first floor and
- 733 sf on second floor.

Atty. Meier disagrees with how the property owner's surveyor interpreted the grandfathered expansion with respect to Zoning Ordinance section 1.3B and made two errors. He included the garage and the dwelling in the sf calculation and Atty Meier interprets the word 'etc' in the Ordinance to exclude garage. The August 2009 ZBA minutes were reviewed.

The second error is what is included in the expansion area. The surveyor and Bob Boyd agree that 50% of the 1st floor is allowed. Atty. Meier does not agree. If only 50% of the 1st floor is allowed, then they they could expand as much as they want. Atty Meier states that only 50% of any expansion, regardless of basement, first or second floor, should be allowed.

The height of the building is also in dispute. The Ordinance states that the height can not exceed the height above sea level that the current roof line is. Atty. Meier did not have the correct measurements of the garage and only estimated with standard garage door heights.

Atty. Meier stated that the driveway is too close to the setback and the stone structures or patios appear to be within the setback. The applicant is amending their plan to comply with driveway setbacks and Mr. Lucy confirmed that patios are not considered structures.

PUBLIC COMMENT IN SUPPORT OF THIS APPEAL

Mr. Chris Connolly, the applicant, wants to limit the tearing down of camps and building of 'Mac-mansions'. He read some notes from his brother concerning the gentrification of the lake. Mr. Lucy stated that the Board is in no position to promote or discourage the gentrification of the lake.

Atty. Meier reiterated that they are against 4000 sf expansion of gross living space vs a 992 sf expansion allowed in the 2009 ZBA case. Mr. Lucy asked Atty Meier to define what a 4000 sf

expansion is. The 2310 sf structure which includes the house and garage will become to 6956 sf gross living space with the 1st floor, 2nd floor and garage. Mr. Lucy clarified that this Board does not address gross living area; the Ordinance is only concerned with footprint.

PUBLIC COMMENT IN OPPOSITION TO THIS APPEAL

Atty. Peter Malia, agent for the property owners, opposed the Connolly's Appeal as they have not met their burden of proof and is without merit. The Ordinance allows 50% expansion of the 1st floor footprint which exists as of March 2007

In March 2015, Mr. Richey met with Mr. Boyd to review what is allowed by Zoning. Mr. Boyd explained the following:

- Existing house and attached garage is 2310 sf (house- 1984 sf & garage-326 sf)
- Section 1.3B allows for 50% expansion of the first floor footprint, (1155 sf expansion).
- Existing 2310 sf + 1155 sf (50%) = 3465 sf allowed expansion of 1st floor footprint.

In a 2009 ZBA case, the roof height elevation increase of 9.12' was granted and in Mr. Richey's current plans, the roof height increase is less than 9.12' allowed.

Mr. Richey then hired an architect to design a 3364 sf footprint, with a roof height allowance granted by an August 2009 Variance. This design is 101 sf less than what is permitted.

All required DES Shoreland permits were approved in August 2017 and Septic Approval for Construction Permits were received in September 2017.

Atty. Malia explained that in order to take advantage of the 50% expansion allowed by Zoning, the following must exist on the property:

1. The setbacks of the expanded structure cannot be less than the setbacks of the original non-conforming structure.
Mr. Boyd confirmed that the proposed setbacks will not be less and in some areas, the setbacks will be more conforming.
2. The proposed non-conforming structure will be no closer than the existing non-conforming structure to the high water line.
The existing structure is 16.7' from the high water line and the proposed structure is 18.7' from the high water line, which will be further back from the high water line.
3. The expanded structure will be no taller above sea level than the highest roofline of the existing structure.

In the 2009 Variance, a surveyor used the standard practice of a starting elevation of 500' as station one with the lake and structure elevation determined from that point.

In 2016/2017, when the surveyor took the measurements for this project, he applied NADV 1988 standard which is used by FEMA, and according to the DES Consolidated List of Waterbodies current measurement, the surface elevation of Silver Lake is 468.2. Taking into account these two measurement standards, the proposed roofline will be 3.5" below what is allowed by the 2009 Variance.

Atty. Malia addressed Chris Connolly's statement of structures closer to side setbacks and driveway placement. The structures that they refer to, such as patios and retaining walls less than 4', are not structures and are not subject to the side setback requirements or permits. According to Mr. Boyd, a

driveway has no bearing on the issuance of a building permit although the location must meet the 15' sideline setback as stated in Section 5.09 of the Zoning Ordinance. The proposed new driveway will not extend any closer than the existing driveway.

Mr. Lucy read Zoning Ordinance 1.3B that allows the 50% sf expansion of the first floor footprint of the existing structure and an email thread from a previous ZBA Administrative Assistant. At that time, Mr. Lucy was unaware that the email was in reference to a previous ZBA case which he chaired.

Mr. Bertman, Architect, presented the proposed plan, with a low-profile living roof. Mr. Lucy asked if any part of the existing garage is non-conforming. Mr. Bertman stated all parts of the existing garage are conforming. Mr. Lucy stated that because the existing garage is conforming, there is no limit to the expansion of the garage and should not be part of the calculation. An existing conforming garage within the building envelope can be expanded.

Mr. Lord asked if the 50% rule only applies to the non-conforming portion of the building. Mr. Lucy asked Mr. Bergman to highlight the portions of the existing structure that are non-conforming and the portions of the proposed structure that are non-conforming, using 2 different colors to outline the areas.

Mr. Lucy called for a 10 minutes break to allow the parties time to review their drawings. Mr. Wes Smith, from Thorne Surveyors, showed the existing structure within the 75' setback to Silver Lake outlined in green and the proposed structure outlined in pink.

Mr. Lucy stated that anything within the existing footprint is a moot point.

Before the Board can make its decision, the following information/measurements will be needed:

1. The existing non-conforming sf
2. The proposed non-conforming sf
3. The sf area of the overlap

Mr. Lucy stated that all direct testimony will be taken tonight and there will be time for rebuttal.

Mr. Mark Richey, property owner, reviewed his plans and that it is his intent to be sensitive to the lake and to his neighbors. The bulk of the structure will be single story. Since 2014, he has worked closely with DES and the Town to insure that he meets all State regulations and Town Zoning Ordinances. The existing lot has terrible drainage and his proposal addresses good water maintenance and proper drainage.

Mr. Steve Larson, the builder, clarified the garage dimensions. The second story of the proposed structure will be over the garage. The first floor will have a finished basement.

Mr. Boyd reviewed his memo.

DELIBERATION

Mr. Lucy polled the Board on whether to continue until next month when concise information can be presented by the property owner and the Code Enforcement Officer. Mr. Lord suggested a 1 page document to explain the numbers and measurements. A memo will be mailed out by Mrs. King outlining the information required before the next meeting.

MOTION

Mr. Lucy made a **Motion to Continue** Case # 17-06 until the January 17, 2018 meeting at 6pm, and that the following additional information and any other information believed to be relevant to this case, be delivered to the Office of the Zoning Board of Adjustment Administrative Assistant not later than noon Wednesday January 10, 2018, for it to be considered during this continued hearing:

1. Applicant, Property Owner and Code Enforcement Officer shall each provide a one page exhibit in an 8 ½ x 11” format, using legible font, summarizing the applicable square foot areas and the relevant elevation/heights with the basis for which those numbers support each of your positions.
2. Property Owner shall provide ten (10) hard copies of exhibit in 11 x 17” format with the information depicted in plan view, with each item depicted in distinct colors and/or hatch patterns:
 - a. The square footage of the existing non-conforming structure.
 - b. The square footage of the proposed non-conforming structure.
 - c. The square footage of the non-conforming existing structure subsumed by the proposed structure
3. Property Owner shall provide an overlay plan view exhibit of the proposed improvements over the existing improvements, with all the Town setback lines clearly shown, including sideline extensions.
4. Property Owner shall provide a photographic exhibit depicting the street view of the existing home overlaid with a line drawing of the proposed home.
(Property Owner is welcome to submit additional views in this format.)

Mr. Hughes seconded. All Approved.

Mr. Hughes requested that ZBA Attorney Bernie Waugh be consulted for his opinion on the Section 1.3B.

SECOND PUBLIC HEARING - ZBA DOCUMENTS / PROCEDURES:

PUBLIC COMMENT

Mr. Lucy opened the Second Hearing for public comment on the following ZBA documents and procedures:

- Rules of Procedure
- Instructions for Applications
- Findings of Facts Worksheet
- Conditions To Be Met

Hearing no public comment, Mr. Lucy closed the public portion of the hearing.

DELIBERATION

Mr. Lord stated that during the first hearing there were only grammatical items to be addressed and the contents of the documents were correct.

MOTION

Mr. Lucy made a **Motion** to accept these 4 document and procedures; Mr. Lord seconded. All Approved. Mrs. King will email the final documents to the Board members and bring hard copies to the next meeting for the Board members' binders.

APPROVAL OF NOVEMBER 15, 2017 MINUTES

The Draft Minutes were reviewed and accepted.

Mr. Lord made a Motion to approve the minutes as written; seconded by Mr. Anderson. Mr. Lucy and Mr. Totman abstained. All others approved.

ADJOURNMENT

Mr. Lucy motioned to adjourn; seconded by Mr. Lord. All in favor; meeting adjourned at 8:13pm.

Respectfully submitted,

Colleen King
Land Use Administrator

These minutes were approved with edits at the January 17, 2018 ZBA meeting.