



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA APPROVED MINUTES
APRIL 21, 2021**

CALL TO ORDER: Chairman Lucy called the meeting to order at 6:07pm and led those in attendance in saying the Pledge of Allegiance.

Mrs. King read Governor Sununu's Section 18 of Executive Order 2020-04 Temporary Modifications of Public Access to Meetings Under RSA 91-A. This Executive Order allows for electronic participation to conduct meetings and waives the requirement of a quorum to be physically present. A roll call vote for each motion will be taken, as required and anyone who wishes to speak in person needs to identify themselves.

ATTENDANCE: Mrs. King called the roll:

Stuart Lord -Present Mark Totman – Present via speakerphone Drew Gentile -Present
Mark Lucy - Present. Bebe Bartlett – Excused Doug McAllister - Present

OTHERS PRESENT in PERSON: Colleen King - Land Use Administrator, Moselle Spiller - Madison TV, Marc Ohlson, Noreen Downs, Dennis & Kathy Mazzone, John Knight, Ron Briggs, Paul Martin, Chris Jean, Mark McConkey, Michael & Kathleen O'Keefe, Sharon Barrows, Scott Santos.

PUBLIC HEARING:

Case # 21-01 A VARIANCE is requested by Dennis Mazzone for property located at 60 Saxon Rd, Map 128, Lot 26, in the Rural Residential Zone, to allow a shed to be located 4' from the South boundary line and within 5' of the East boundary line, which is in violation of the Madison Zoning Ordinance Article V.9 A, which requires the setback of 25' from boundary lines.

MEETING NOTICE:

Mrs. King reported that tonight's Public Hearing was posted on April 8, 2021 in the Madison Town Hall upper and lower levels, Madison and Silver Lake Post Offices, Conway Daily Sun and all abutters were notified by Certified US Mail.

CONFLICT OF INTEREST: The Board was individually polled for any conflicts of interest with Case #21-01: Mr. McAllister - No Mr. Lord – No Mr. Lucy - No Mr. Totman – No Mr. Gentile - No

RULES OF PROCEDURE/ WAIVER REQUEST: Mr. Lucy explained the scope of a Variance request.

REGIONAL IMPACT: The Board was individually polled on whether this case had regional impact: Mr. McAllister - No Mr. Lord – No Mr. Lucy - No Mr. Totman – No Mr. Gentile - No

SWEARING-IN: Dennis & Kathy Mazzone were sworn-in by Mr. Lucy.

WAIVER REQUESTS: The applicants submitted a waiver request to use a site plan, dated May 1986. Ron Briggs, who originally did the site plan was also present at the hearing but for another Case. Mr. Lucy made a **MOTION** to conditionally approve the Waiver Request based on the forthcoming testimony. Mr. Lord seconded. A rollcall vote was taken.
Mr. McAllister - Yes Mr. Lord – Yes Mr. Lucy - Yes Mr. Totman – Yes Mr. Gentile - Yes

PRESENTATION: Mr. Mazzone explained that he built the shed in the summer of 2020 without applying for a building permit. The shed was built on blocks and placed it about 5’ from the rear lot line. He received a letter from the Building Inspector informing him that he needed a Building Permit. Several abutters wrote letters in support of the shed remaining in the same location and that it is the best location. Mr. Lord asked if the house is in the same location on the lot as presented on the site plan. Mr. Mazzone said that it is not in the exact location as the site plan showed the proposed location. The only place on the lot to meet the zoning requirements is in front of the house. That location would be the worst spot for his neighbors. Mr. Gentile agreed that it is not reasonable to have a shed in front of the house. Mr. Lord stated that the location now is the best location because it is the least visible.

PUBLIC COMMENT:

Mr. Lucy opened the hearing for Public Comment. Mr. Knight, an abutter, suggested that the shed remain where it is because it is blocked by trees. The letters from other abutters were read into the record by Mrs. King. Hearing no further comments, Mr. Lucy closed the public comment portion of the hearing.

BOARD DELIBERATION:

Mr. McAllister asked if the shed could be moved to a flat location as shown on the site plan? Mrs. Mazzone stated that the land is sloping and not level. There are large trees in the way. Mr. Lord stated that the house does not appear to be properly situated and the contours of the land are not accurate, given the testimony of Mrs. Mazzone.

MOTION/VOTE:

Mr. Lucy made a **MOTION** to remove the conditional waiver request approval as the site plan and the physical lay of the land differs and approve the request; Mr. Mr. Lord seconded.
Rollcall Vote: Mr. McAllister - Yes Mr. Lord – Yes Mr. Lucy - Yes Mr. Totman – Yes Mr. Gentile – Yes
The Variance application requires a Certified Plot Plan be submitted unless a waiver is granted. The Plot Plan submitted by Mr. Mazzone appeared to have discrepancies with the actual land and buildings.
Mr. Lucy advised Mr. Mazzone to contact the Building Inspector and apply for a building permit.

CASE # 21-02

An **EQUITABLE WAIVER** is requested from Article 5.9A of the Madison Zoning Ordinance to permit 8.7sf of an existing shed to remain in place at 15 Liberty Lane, Map 130, Lot 6. One corner of shed is 22.9 feet from the lot line, where 25 feet is required
and

A **VARIANCE** is requested by Ronald Briggs, agent for Graham & Wendy Spruiell, for property located at 15 Liberty Lane, Map 130, Lot 6, in the Rural Residential Zone to allow a portion of an addition (42sf of the 78sf non-conforming footprint) to be a maximum of 3’ 5” taller than the existing roofline, which is in violation of Madison Zoning Ordinance Article I, Section 1.3B.

MEETING NOTICE:

Mrs. King reported that tonight's Public Hearing was posted on April 8, 2021 in the Madison Town Hall upper and lower levels, Madison and Silver Lake Post Offices, Conway Daily Sun and all abutters were notified by Certified US Mail.

CONFLICT OF INTEREST: The Board was individually polled for any conflicts of interest with Case #21-02: Mr. McAllister - No Mr. Lord – No Mr. Lucy - No Mr. Totman – No Mr. Gentil - No

RULES OF PROCEDURE/ WAIVER REQUEST: Mr. Lucy explained the scope of an Equitable Waiver and a Variance request. There is no waiver request.

REGIONAL IMPACT: The Board was individually polled on whether this case had regional impact: Mr. McAllister - No Mr. Lord – No Mr. Lucy - No Mr. Totman – No Mr. Gentil - No

SWEARING-IN: Ron Briggs, Paul Jean and Chris Martin were sworn-in by Mr. Lucy.

PRESENTATION: The Shed has not been in place for over ten years. It was built a couple of years ago. The roof overhangs in violation approximately 8.7sf. The shed is on blocks and could be moved.

PUBLIC COMMENT:

Mr. Lucy opened the hearing for Public Comment.

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

BOARD DELIBERATION: Mr. Lucy confirmed that the shed is on concrete blocks and could be repositioned on the lot to bring it into compliance. Mr. Lord stated that the NW corner of the shed is conforming and the shed could be pivoted. Mr. Gentile inquired about the weight of the shed and whether it is moveable. Mr. Jean said that it is relatively light.

MOTION/ DISCUSSION/ VOTE:

Mr. Lucy made a **MOTION** to GRANT the Equitable Waiver; Mr. Lord seconded.

ROLLCALL VOTE: Mr. Lucy- No, Mr. Lord - No, Mr. Totman - No, Mr. McAllister - No, Mr. Gentile – No. The request for an Equitable Waiver was **DENIED** by a unanimous vote because the applicant agreed to move the shed to a compliant location.

Mr. Lucy reviewed the 30-Day Appeal period stating that day one begins on April 22, 2021.

CASE # 21-02

A **VARIANCE** is requested by Ronald Briggs, agent for Graham & Wendy Spruiell, for property located at 15 Liberty Lane, Map 130, Lot 6, in the Rural Residential Zone to allow a portion of an addition (42sf of the 78sf non-conforming footprint) to be a maximum of 3’ 5” taller than the existing roofline, which is in violation of Madison Zoning Ordinance Article I, Section 1.3B.

MEETING NOTICE:

Mrs. King reported that tonight's Public Hearing was posted on April 8, 2021 in the Madison Town Hall upper and lower levels, Madison and Silver Lake Post Offices, Conway Daily Sun and all abutters were notified by Certified US Mail.

CONFLICT OF INTEREST: The Board was individually polled for any conflicts of interest with Case #21-02: Mr. McAllister - No Mr. Lord – No Mr. Lucy - No Mr. Totman – No Mr. Gentile - No

RULES OF PROCEDURE/ WAIVER REQUEST: Mr. Lucy explained the scope of a Variance. There is no waiver request.

REGIONAL IMPACT: The Board was individually polled on whether this case had regional impact: Mr. McAllister - No Mr. Lord – No Mr. Lucy - No Mr. Totman – No Mr. Gentile - No

SWEARING-IN: Ron Briggs, Paul Jean and Chris Martin were sworn-in by Mr. Lucy.

PRESENTATION: Mr. Briggs stated that a Shoreland Permit has been issued by the State of NH. The plan is to raise the roofline from 16 ½’ to 20’. The house was constructed in 1960 and the elevation change will only be seen from the lake. Architecturally, it will blend in with the trees.

PUBLIC COMMENT:

Mr. Lucy opened the hearing for Public Comment. Mrs. King read a letter from and abutter Mr. Mayer, in support of the Variance and referenced the location of the septic. Mr. Lucy stated that septic issues are not a Zoning Board issue. Hearing no more comments, Mr. Lucy closed the public comment portion of the hearing.

BOARD DELIBERATION: The Chair noted for the record that the roof ridge line is 5.7’ within the setback area. Mr. Lord stated that Zoning Ordinance 1.3B allows for expansion under 50% and this proposal is much less than 50%. The footprint will be expanded per the guidelines and the only relief needed is for the roof elevation. There is a 1’ overhang from the roof. The case does not apply to the recent NH Supreme Court ruling. Mr. Totman remembered that this house used to have pilings in the water with a Rec house over the water. Mr. McAllister stated that the trees dwarf the house on the property. Mr. Lucy stated that the walls are only 7’ tall and the height would definitely improve the comfort in living there. Mr. Gentile said that this is a reasonable request.

MOTION/ VOTE:

Mr. Lucy made a **MOTION** to **GRANT** the Variance; Mr. Lord seconded.

ROLLCALL VOTE: Mr. Lucy - Yes, Mr. Lord - Yes, Mr. Totman - Yes, Mr. McAllister -Yes, Mr. Gentile – Yes.

The request for a Variance was **APPROVED** by a unanimous vote.

Mr. Lucy reviewed the 30-Day Appeal period stating that day one begins on April 22, 2021.

CASE # 21-03 Variances are requested by Mark McConkey, agent for David Furtado and Stephen Cateon, for property located at 26 Huttwill Drive, Map 104, Lot 1, in the Village District of Edelweiss, to construct a house and septic system on a 0.20 ac parcel, in violation of Madison Zoning Ordinances Article V, Section 5.9E and Article IV, Section 4.5 C with the following relief:

- 1) The house to be 40 feet from the center line of Huttwill Drive, where 65 feet is required,
- 2) 25 feet from the rear boundary line, where 40 feet is required
- 3) 10.63 feet from a wetland 0.25 acres or larger in size, where 50 feet is required and
- 4) A waste disposal system to be 50 feet from a wetland, where 75 feet is required.

MEETING NOTICE:

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CONFLICT OF INTEREST: The Board was individually polled for any conflicts of interest with Case #21-03: Mr. McAllister - No Mr. Lord – No Mr. Lucy - No Mr. Totman – No Mr. Gentile - No

RULES OF PROCEDURE/ WAIVER REQUEST: Mr. Lucy explained the scope of a Variance. There is no waiver request.

REGIONAL IMPACT: The Board was individually polled on whether this case had regional impact: Mr. McAllister - No Mr. Lord – No Mr. Lucy - Yes Mr. Totman – No Mr. Gentil - No

SWEARING-IN: Mr. McConkey, Michael & Kathleen O’Keefe, Scott Santos, Marc Ohlson and Noreen Downs were sworn-in by Mr. Lucy.

PRESENTATION: They had the lot surveyed and had a wetlands scientist flag the boundaries. The plan is to build a 24’ x 40’ 2-bedroom ranch with a 1’ roof overhang. There will be a 4’ frost wall and the ranch will be on top of it. The setbacks from the structure are from the overhang. The whole lot is a compromise with respect to all setbacks. Mr. Lord pointed out although the proposal is for a 960sf house, the building envelope only allows for a 30sf house.

PUBLIC COMMENT: Mr. Lucy opened the hearing for Public Comment.

Mr. O’Keefe, an abutter across the street at 25 Huttwil Drive, stated that in 2000 he inquired about this land and was told that it was unbuildable. The owners purchased this 0.20ac parcel in 2010 from the Town in a Tax Sale Auction for \$500.00. The lot was advertised as an unbuildable lot, which is probably why it sold for only \$500. Mr. Santos an abutter at 25 Bern Drive who has lived there for 30 years, stated that the proposed building and the septic system will significantly encroach on the wetlands next to their house and septic. They will only meet 21% and 67% of the required setbacks. This lot is unbuildable because it doesn’t come close to meet setbacks. The applicants cannot claim that they are harmed because they bought a \$500 parcel that is not buildable. This lot has a high-water table and very poorly drained soil, as stated in the applicant’s plan. The Town Zoning Ordinance states that it is in place to protect the Town of Madison and the wetlands. This proposal will harm the wetlands and the area. The Variance process is for minor and less impactful relief if you don’t meet the setbacks. This application will have a major negative impact on the area.

Mr. Lucy stated that this is a lot of record.

Mr. Ohlson, a property owner in the same development, stated that this lot has a 30sf building envelope. The applicant is confusing planning/zoning law with tax law. Just because it is a legal lot of record does not mean that it meets the building requirements. This is a classic reason why the State passed the subdivision regulations in the 70’s.

Mrs. Downs was concerned that this applicant is asking for too many Variances which will be harmful to the land and maybe they need to consider a small house.

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

BOARD DELIBERATION:

Mr. McAllister stated that the applicant took a gamble and bought this parcel for \$500 at a tax auction. Sometimes gambles don't pay off.

Mr. Lord read the first paragraph of the Madison Zoning Ordinance which states,

1.1 Purpose: This ordinance and its regulations as herein set forth are for the purpose of promoting Public health, safety, general welfare, and the natural beauty of the environment which provides the primary basis for the unique character of the Town area and its residents. It also regulates the conservation of the natural resources, stabilizing the value of the land and its improvements within the Town, and encouraging uses that are in harmony, visually and aesthetically, with rural living, in accordance with the provisions of RSA Chapter 674, 16-21. This zoning ordinance, by application and provisions of State Law, seeks to protect existing property owners against a new use nearby which may be incompatible or undesirable and also damaging to existing owner's present property by lowering its desirability and value. All present uses may continue.

MOTION/ VOTE: Mr. Lucy made a **MOTION** to grant the Variances requested for property located at 26 Huttwill Drive, Map 104, Lot 1, in the Village District of Edelweiss, Case #21-03; Mr. Lord seconded.

ROLL-CALL VOTE:

Mr. McAllister - No Mr. Lord – No Mr. Totman – No Mr. Gentile – No Mr. Lucy – Yes

The request for a Variance was **DENIED** by a 1-4 vote.

Mr. Lucy reviewed the 30-Day Appeal period stating that day one begins on April 22, 2021.

CASE # 21-04 Variances are requested by Mark McConkey, agent for the Huggins Family Irrevocable Trust, for property located at 39 Interlaken Circle, Map 108, Lot 22, in the Village District of Edelweiss to construct a house, garage, breezeway and septic on a 0.79ac parcel with wetlands 0.25ac or larger in violation of Madison Zoning Ordinance Article V, Section 4.5 C, with the following relief:

- 1) The house to be 23.69 feet from wetlands where 50 feet is required,
- 2) The breezeway to be 31.07 feet from wetlands where 50 feet is required,
- 3) The garage to be 32.03 feet (to south) and 30.97 feet (north) from wetlands where 50 feet is required and
- 4) A septic field to be 55.85 feet (to south) and 51.31 feet (to east) from wetlands where 75 feet is required.

MEETING NOTICE: Mrs. King reported that tonight's Public Hearing was posted on April 8, 2021 in the Madison Town Hall upper and lower levels, Madison and Silver Lake Post Offices, Conway Daily Sun and all abutters were notified by Certified US Mail.

CONFLICT OF INTEREST: The Board was individually polled for any conflicts of interest with Case #21-04: Mr. McAllister - No Mr. Lord – No Mr. Lucy - No Mr. Totman – No Mr. Gentile - No

REGIONAL IMPACT: The Board was individually polled on whether this case had regional impact: Mr. McAllister - No Mr. Lord – No Mr. Totman – No Mr. Gentile – No Mr. Lucy - Yes

RULES OF PROCEDURE/ WAIVER REQUEST: Mr. Lucy explained the scope of a Variance. There is waiver request. Mr. McConkey explained where the setbacks are for the septic plan and the house. Mr. McAllister stated that the legend on the plan presented does not match the proposed plan description.

MOTION: Mr. Lucy made a **MOTION** to grant a waiver for a certified plot plan as required; Mr. McAllister seconded. **ROLL-CALL VOTE:** Mr. McAllister - No Mr. Lord – No Mr. Totman – No

Mr. Gentile – No Mr. Lucy - No

Based on the waiver request denial, a **MOTION** was made by Mr. Lucy and seconded by Mr. McAllister to **CONTINUE** this hearing until the July 21, 2021 meeting so that the applicant is able to have a certified plot plan done by a NH Certified Surveyor. **ROLL-CALL VOTE:** Mr. McAllister - Yes Mr. Lord – Yes Mr. Totman – Yes Mr. Gentile – Yes Mr. Lucy - Yes

CASE# 21-05 Variances are requested by Mark McConkey. Agent for Brian and Sheila Evangelista, for property located at 51 Oak Ridge Road, Map 104, Lot 70, in the Village District of Edelweiss to construct a house, deck, stairs and bulkhead on 0.23 ac parcel, in violation of the Madison Zoning Ordinances Article V, Section D & E with the following relief:

- 1) The house to be 52.95 feet from the centerline of Oak Ridge Rd where 65 feet is required and
- 2) The deck to be 16.40'; the stairs to be 10.0'; and the bulkhead to be 22.87' where 25' is required.

MEETING NOTICE: Mrs. King reported that tonight's Public Hearing was posted on April 8, 2021 in the Madison Town Hall upper and lower levels, Madison and Silver Lake Post Offices, Conway Daily Sun and all abutters were notified by Certified US Mail.

CONFLICT OF INTEREST: The Board was individually polled for any conflicts of interest with Case #21-05: Mr. McAllister - No Mr. Lord – No Mr. Lucy - No Mr. Totman – No Mr. Gentile - No

REGIONAL IMPACT: The Board was individually polled on whether this case had regional impact: Mr. McAllister - No Mr. Lord – No Mr. Totman – No Mr. Gentile – No Mr. Lucy - No

RULES OF PROCEDURE/ WAIVER REQUEST: Mr. Lucy explained the scope of a Variance. There is waiver request. Mr. McConkey explained that because the lot is a corner lot, the setbacks differ depending on the driveway and front door location.

MOTION: Mr. Lucy made a **MOTION** to grant a waiver for a certified plot plan as required; Mr. McAllister seconded. **ROLL-CALL VOTE:** Mr. McAllister - No Mr. Lord – No Mr. Totman – No Mr. Gentile – No Mr. Lucy - No

Based on the waiver request denial, a **MOTION** was made by Mr. Lucy and seconded by Mr. McAllister to **CONTINUE** this hearing until the July 21, 2021 meeting so that the applicant is able to have a certified plot plan done by a NH Certified Surveyor. **ROLL-CALL VOTE:** Mr. McAllister - Yes Mr. Lord – Yes Mr. Totman – Yes Mr. Gentile – Yes Mr. Lucy - Yes

APPROVAL OF DECEMBER 16, 2020 DRAFT MINUTES:

The Draft Minutes were reviewed and edits made. A **MOTION** was made by Mr. Lucy to approve the minutes as amended; seconded by Mr. Mr. Lord

ROLLCALL VOTE: Mr. Lucy - yes, Mr. Lord - yes, Mr. Totman - yes, Mr. Gentile - yes. All Approved.

ADJOURNMENT: Mr. Lucy made a **MOTION** to adjourn at 9:35 m; seconded by Mr. Lord.

ROLLCALL VOTE: Mr. Lord - yes, Mr. Totman - yes, Mr. McAllister - yes, Mr. Gentile - yes, Mr. Lucy - yes.

Minutes submitted by:

Colleen King, Madison Land Use Administrator

*These minutes were **APPROVED** at the June 16, 2021 ZBA meeting.*