



**TOWN OF MADISON  
ZONING BOARD OF ADJUSTMENT  
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**ZBA APPROVED MINUTES  
JUNE 16, 2021**

**CALL TO ORDER:** Mr. Stuart Lord called the meeting to order at 6:00pm and led those in attendance in saying the Pledge of Allegiance.

**ATTENDANCE:** Mrs. King called the roll:

Stuart Lord -Present Drew Gentile -Present George Rau – Present Mark Totman -Excused  
Doug McAllister- Present. Bebe Bartlett - Present Mark Ohlson - Present

**OTHERS PRESENT:** Colleen King/ Kim Cyr - Land Use Administrators, Lorelie Gerard, Carol Dandeneau - Madison TV, Carla and Cole Parker, Mark McConkey, Jake McConkey,

**ELECTION OF OFFICERS:** Mr. McAllister made a MOTION to elect Mr. Lord as Chair; Mr. Gentile seconded. All Approved.  
Mr. Lord made a MOTION to elect Mr. Gentile as Vice-Chair; Mrs. Bartlett seconded. All Approved.

**ELEVATION OF ALTERNATES:** Mr. Lord made a MOTION to elevate Mrs. Bartlett to a permanent full member of the Board; seconded by Mr. Gentile. All approved and will be officially appointed by the Selectmen at their next meeting on June 29, 2021.  
Mr. Lord made a MOTION to elevate Mr. Rau to a full member for tonight's hearing; seconded by Mr. McAllister. All Approved.

**APPROVAL OF APRIL 21, 2021 DRAFT MINUTES:**

The Draft Minutes were reviewed with edits made. A MOTION was made by Mr. Lord to approve the minutes as amended; seconded by Mr. McAllister. VOTE: 4-0-1 Mr. Lord - yes, Mr. Gentile - yes, Mr. Ohlson- yes, Mrs. Bartlett - yes, Mr. McAllister – yes, Mr. Rau – abstained.

**PUBLIC HEARING:**

**CASE # 21-06** A Variance is requested by Lorelie Gerard of Horizon Engineering, agent for Coleman and Carla Parker, for property located at 0 Pokey Pine Road, Map 248, Lot 36, in the Rural Residential Zone to construct a house on a 1.4ac parcel, in violation of Madison Zoning Ordinance, Article V, Section 5.9A, with the following relief: 1). The front corners of the house to be 54.45' and 50.54' from the center of the road, where 75' is required.

**MEETING NOTICE:** Mrs. King reported that tonight's Public Hearing was posted on June 3, 2021 in the Town Hall upper and lower levels, Madison & Silver Lake Post Offices and the Conway Daily Sun. All Abutters were notified by certified mail.

**CONFLICT OF INTEREST:**

The Board was individually polled for any conflicts of interest with Case # 21-06: Mr. Gentile - no, Mr. Lord - no, Mr. McAllister - no, Mrs. Bartlett - no, Mr. Rau - no.

**RULES OF PROCEDURE/ WAIVER REQUEST:**

Mr. Lord reviewed the Rules of Procedure for this Hearing and Mrs. King reported that there are no waiver requests.

**REGIONAL IMPACT:** The Board was individually polled on whether this case has regional impact: Mr. Rau - no, Mr. Lord - no, Mr. McAllister - no, Mrs. Bartlett - no, Mr. Gentile - no.

**SWEARING-IN:** Lorelie Gerard, Cole and Carla Parker were sworn-in to testify for this hearing.

**PRESENTATION/ BOARD QUESTIONS:** Ms. Gerard of Horizon Engineering and agent for the applicant, explained the topography of the lot on 0 Pokey Pine Road as being on the side of the mountain and every house on that road is within the road setback because of the slope of the land. The previous owners logged the parcel and a significant amount of fill would be needed to build a house. Mr. Lord clarified that although the plan shows a house and garage, this Variance request is for a house only and asked why the 75' setback is not attainable. Mr. Parker stated that this hearing is only for the house. If a garage is planned in the future, they will then apply for another Variance. He further explained that the temporary logging road through the lot was filled with debris that is not stable or suitable to be built upon. When he was digging down, there were large stumps buried at varying depths; some at 2', some at 4' deep. The survey topography lines are misleading because it shows the level of the logging road, not the original level of the land. Mr. McAllister stated that the topography appears to fall away from the front of the lot in a 'V' shape. Mr. Parker explained that the 'V' area is unstable fill.

**PUBLIC COMMENT:** Mr. Lord opened the hearing for public comment.

Mrs. Parker told the Board that they want to build a house for their children to enjoy.

Hearing no further comments in favor or opposed to the appeal, Mr. Lord made a **MOTION** to closed the public hearing; Mr. McAllister seconded. All Approved.

**FINDING OF FACTS:** Mr. Lord lead the Board in a review of the Findings of Facts:

1. There is a narrow building envelope due to the amount of fill required and the slope of the land.
2. The survey elevation lines are not a true reflection of the topography since a significant amount of unstable fill had been added.
3. The original soil conditions are unknown.
4. The existing soil conditions is not suitable to build on.
5. There needs to be native soil to support a house.
6. There are a significant number of other houses in the neighborhood that are all built within the road setback area due to the topography.
7. The cost of suitable fill would be prohibitively expensive to build within the conforming space.

**DELIBERATION:** Mr. Lord led a discussion of the 5 criteria for a Variance and read a definition of 'Public Interest'. Mrs. Bartlett stated this request would not be contrary to the public interest, as it doesn't violate the basic zoning objective.

Mr. Lord continued: the Spirit of the Ordinance is to allow the town to have houses set back far enough to allow for an open airy feeling and a house in this location and in this neighborhood does not violate that spirit. The Substantial Justice would be served as it would allow a house to be built without being a detriment to the public. The Values of the neighboring houses would not be diminished as they are also within the road setback. Mr. McAllister explained that Literal Enforcement would be a unique hardship due to the lay of the land at King Pine and the Proposed Use is a reasonable one.

Mr. Lord made a **MOTION** that this application meets the 5 criteria for a Variance; Mr. McAllister seconded. All Approved.

#### **MOTION/VOTE:**

Mr. Lord made a **MOTION** to approve this request for a Variance for property located at 0 Pokey Pine Road, Map 248, Lot 36, in the Rural Residential Zone to construct a house on a 1.4ac parcel, in violation of Madison Zoning Ordinance, Article V, Section 5.9A, with the following relief that

- 1). The front corners of the house to be 54.45' and 50.54' from the center of the road, where 75' is required

in accordance with the certified plot plan drawn by Horizons Engineering, dated May 25, 2021, and submitted by the applicant as part of this hearing; seconded by Mr. Gentile.

All APPROVED by a vote of 5 to 0.

Mr. Lord read the provisions of the 30-day appeal period.

#### **CASE #21-03 REQUEST FOR RE-HEARING:**

To consider a Request For Rehearing by Mark McConkey, agent for David Furtado and Stephen Cateon, for property located at 26 Huttwil 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 Huttwil 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, which was denied.

#### **RULES OF PROCEDURE:**

Mr. Lord explained the difference between a public hearing and a public meeting and the procedure for a Re-hearing Request. He also reviewed portions of Chapter 4 Appeal From A Board's Decision in the NH ZBA Handbook.

#### **DISCUSSION/DELIBERATION:**

After reading the Re-hearing Request and listening to the Madison TV recording of the April ZBA meeting, Mr. Lord agreed with the applicant that the 5 criteria for a Variance were not examined by the Board at the meeting. RSA 674:33-I 2a explains the powers of the ZBA, which addresses this point. RSA 676:3-I states that if a Request is denied, then a reason must be given in the Motion and stated in the Notice of Decision. The reason for denial was not stated in the motion nor in the Notice of Decision. Mr. Lord stated that the Board did not follow its own procedures and that a rehearing is an opportunity to fix this error.

#### **MOTION:**

Mr. Lord made a **MOTION** to approve the Request for a Re-Hearing; seconded by Mrs. Bartlett.

**VOTE:**

Mr. Lord - yes, Mr. Gentile - yes, Mrs. Bartlett - yes, Mr. McAllister – yes, Mr. Rau – yes.  
The case will be re-heard at the July 21, 2021 ZBA meeting at 6pm.

**ADMINISTRATION:**

Mr. Lord reviewed the several items:

1. Checklist for the Chair - he modified and added some key questions following the rules of procedure. All Board members will have this checklist to follow during the meetings as a ‘training’ on how the meeting are run.
2. ‘Riggin’s Rules’ – these are great guidelines the behavior of the Board and are provided in the notebooks provided to all Board members. The notebook contains key documents and procedures for the Board use along with the Madison Zoning Ordinance for reference.
3. Asked about the need for swearing-in of people who will speak for or against an application and whether the option for a full Board needs to be offered. Mrs. King will consult with lawyers at the NH Municipal Association.
4. There was some discussion on the definition of Regional Impact. Mrs. Bartlett will forward an article to Mrs. King for distribution to the Board.
5. There is still a great need for at least one more ZBA Alternate. People interested can contact Kim Cyr, the new Land Use Administrator.
6. The ZBA budget was reviewed.
7. There was discussion providing thoughts to the Planning Board regarding several Zoning Ordinances (expansion within the setback, lake front setbacks of 75’ (Madison) vs 50’ (State) and whether they need to be aligned). A suggestion was made to invite SLAM and VDOE to a preliminary meeting with the Planning Board for input.
8. This is the last meeting for Mrs. King. The Board wished her well and thanked her for her service and help on this Board. She will be missed.

**ADJOURNMENT:**

Mr. Lord made a MOTION to adjourn the meeting; Mr. Gentile seconded. All approved.  
The meeting adjourned at 8:39pm.

Respectfully Submitted,  
Colleen King  
Land Use Administrator