



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA APPROVED MINUTES
October 20, 2021**

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

ATTENDANCE: Mrs. Cyr called the roll:

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

OTHERS PRESENT: Kim Cyr - Land Use Administrator, Moselle Spiller & Aysia Morency- Madison TV, and Mark McConkey, Robert Navitsky, Dustin Cormier, and Susan Klomp

ELEVATION OF ALTERNATES: Mr. Lord made a **MOTION** to elevate Alternate Marc Ohlson to a full member for this meeting; seconded by Mr. McAllister. The vote was unanimous.

APPROVAL OF September 15, 2021 DRAFT MINUTES:

The Draft Minutes were reviewed and a **MOTION** was made to approve the minutes as presented by Mr. Ohlson, seconded by Mr. McCallister. **VOTE:** 4-0 Mr. Lord – abstained, Mr. Gentile - yes, Mr. Ohlson- yes, Mr. McAllister – yes, Mr. Rau – yes, Mr. Totman – abstained

Case # 21-10-1 Variances are requested by Mark McConkey. Agent for Marianne Donga, for property located at 9 Blinden Drive, Map 105, Lot 24, in the Village District of Edelweiss to construct a house, deck and septic system on 0.52 ac parcel, in violation of the Madison Zoning Ordinances Article IV, Section 4.5C and Article V, Section 5.9E with the following relief:

- 1) To permit elements of the waste disposal system be less than 75 feet from both the northern and southern wetland areas.
- 2) To permit the deck to be less than 65 feet from the center line of Blinden Drive.
- 3) The house and deck be less than 50 feet from the southern wetland area over 0.25 acre in size

MEETING NOTICE: Mrs. Cyr reported that tonight's Public Hearing was posted on October 4, 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 # 21-10-1: Mr. Lord – no, Mr. Gentile - no, Mr. McAllister - no, Mr. Ohlson – no, Mr. Totman - no.

RULES OF PROCEDURE/ WAIVER REQUEST:

Mr. Gentile reviewed the Rules of Procedure for this Hearing and Mrs. Cyr reported that there is a request waiver of a certified plot plan. Mr. McAllister made a **MOTION** to grant the waiver of the certified plot plan, seconded by Mr. Totman.

Rollcall Vote: Mr. McAllister – Aye Mr. Lord – Aye Mr. Ohlson – Aye Mr. Gentile – Aye, Mr. Totman - Aye

MOTION PASSED by a vote of 5 to 0.

REGIONAL IMPACT: The Board was individually polled on whether this case has regional impact: Mr. Lord - no, Mr. Ohlson - no, Mr. McAllister - no, Mr. Gentile – no, Mr. Totman - no.

PRESENTATION/ BOARD QUESTIONS: Mr. McConkey represented the owner of the property. The wetland delineation was performed by Peter Cooperdock, Certified Wetland Scientist #44. The property has all four corners pinned. The pins on the left side of the lot were installed by White Mountain Survey. It is an existing .52 acre lot and it slopes up. The owner will build a modest home. The septic system will be a Presby Environmental Enviro Fin system. The Agent feels he can obtain the State septic approval. The VDOE has not granted a water permit at this time. Mr. McAllister made a **MOTION** to close the public hearing seconded by Mr. Ohlson. All approve.

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

1. The ordinance requires a 50 foot setback from the wetlands where the minimum setback requested is 13.81 feet.
2. The building envelope is not adequate for any construction.
3. The septic system has been placed to meet state requirements so that there is an objective basis to assure health and safety.
4. There is no dominant drainage pattern, rather the lot has poorly drained soils which are seasonally wet.
5. The property is typical of the situation of building lots in the Eidelweiss district.
6. The lot slopes slightly to the east toward lot 25.
7. We do not know if the wetland scientist, Mr Cooperdock, surveyed the entire lot line between lots 24 and 25 which might affect the septic placement. He was aware of the plans and placed a flag on lot 25, so the board has reasonable confidence that the wetland boundaries delineated are accurate enough for our decision making purposes.

DELIBERATION: Mr. Gentile led a discussion of the 5 criteria for a Variance.

The variance will not be contrary to the public interest and will observe the spirit of the ordinance because the Madison ordinance provides the right to use subdivisions which pre-date the ordinance. There is no marked conflict with the ordinance because the use is reasonable and residential. The variance would not change the character of the neighborhood and there is no threat to public safety because the septic system will meet DES requirements. Substantial justice is done because there is no gain to the public which significantly outweighs the loss to the owner if he is denied a variance and the right to build and the proposed house is consistent with the use of other properties in the neighborhood. The value of the surrounding properties would not be diminished because the proposed home is consistent with and appropriate for the neighborhood and in the board's judgment there is no evidence that this kind of construction diminishes property values. The enforcement of the ordinance would result in unnecessary hardship because the building envelope resulting from literal enforcement is so small it would prevent any construction. There is no reasonable alternative to grant relief from the

setback requirements and the unique aspect of this property is the situation of the poorly drained soils, for which reasonable provision has been made by placement of the house and drip lines.

Mr. Lord made a **MOTION** that the five criteria are met, Mr. Totman seconded. All approve

MOTION/VOTE

Mr. McAllister made a **MOTION** to approve this request for a Variance; seconded by Mr. Lord.

Rollcall Vote: Mr. McAllister – Aye Mr. Lord – Aye Mr. Ohlson - Aye Mr. Gentile – Aye Mr. Totman - Aye

MOTION PASSED by a vote of 5 to 0. Mr. Ohlson requested the plan to be corrected to show setback from 30' to 50' and sideline setback to 10'.

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

Case # 21-11 Variances are requested by Mark McConkey. Agent for Robert Navitsky, for property located at 12 Bern Drive, Map 109, Lot 6, in the Village District of Edelweiss to construct a house and septic system on 0.88 ac parcel, in violation of the Madison Zoning Ordinances Article IV, Section 4.5C with the following relief:

- 1) The waste disposal system being less than 75 feet from a wetland 0.25 acre or larger in size
- 2) The house to be less than 50 feet from a wetland 0.25 acre or larger in size

Motion was made by Mr. Lord to proceed as is due to error in the notice, parcel is .88 acres not .52 as noticed; seconded by Mr. Gentile. All approve

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CONFLICT OF INTEREST:

The Board was individually polled for any conflicts of interest with Case # 21-11: Mr. Lord – no, Mr. Gentile - no, Mr. McAllister - no, Mr. Ohlson – yes, Mr. Totman - no. **MOTION** was made by Mr. Lord to have Mr. Ohlson step down due to his business relationship with applicant and elevate Mr. Rau; seconded by Mr. McAllister. All approve

RULES OF PROCEDURE/ WAIVER REQUEST:

Mr. Lord reviewed the Rules of Procedure for this Hearing. There are no waiver requests.

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

PRESENTATION/ BOARD QUESTIONS: Mr. McConkey represented the owner of the property. The wetland delineation was performed by Gary C. Flaherty, Certified Wetland Scientist #2. The septic system meets State standards but not Town standards. The Agent feels he can obtain the State septic approval. Culvert from Bern Drive drains onto property but has no impact on leach field. Mr. Gentile made a **MOTION** to close the public hearing seconded by Mr. McAllister. All approve.

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

- 1) The septic system meets State standards but not Town standards
- 2) The wetland delineation was performed by Gary C. Flaherty, Certified Wetland Scientist #2
- 3) The culvert from Bern Drive drains onto the property. No impact on the leach field.

- 4) Substantial fill added around proposed driveway.
- 5) Low spot identified as wetland is soggy with minimal amount of rain.
- 6) Running water on west side of property.
- 7) Proposed house is on highest elevation portion of property.
- 8) Drainage is not effected by houses on either side due to their elevation.
- 9) Neighboring houses situated very similarly.
- 10) Odd triangular property, the western portion is very narrow and partially unusable for building.
- 11) Modest size house in keeping with neighborhood.
- 12) There is a documented easement through the property.

DELIBERATION: Mr. Lord led a discussion of the 5 criteria for a Variance.

The variance will not be contrary to the public interest because it will not threaten the public health, safety, or welfare as the primary drainage on the property is unaltered. The spirit of the ordinance is observed because there is no impact to abutting properties and the septic design meets state standards. Substantial justice is done because the proposal is consistent with the neighborhood and the modest house is a reasonable use of the property. There is no public gain in not granting the variance. The value of the surrounding properties would not be diminished because the proposed home is consistent with and appropriate for the neighborhood. The enforcement of the ordinance would result in unnecessary hardship because preventing building would create a hardship. The proposed use is a reasonable one because it allows the property to be used for its intended use. The modest house will be in the best possible location on the property considering the small buildable area being a small lot with poorly drained soil.

Mr. Gentile made a **MOTION** that the five criteria are met, Mr. Totman seconded. All approve

MOTION/VOTE

Mr. Gentile made a **MOTION** to approve this request for a Variance would not threaten the health and safety and is a reasonable use of the property based on the unique features of the property independent of easements; seconded by Mr. Totman.

Rollcall Vote: Mr. McAllister – Aye Mr. Lord – Aye Mr. Rau - Aye Mr. Gentile – Aye

Mr. Totman - Aye

MOTION PASSED by a vote of 5 to 0.

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

Case # 21-12 Variances are requested by Dustin Cormier, Agent for Mark Richey, for property located at 35 Mallard Lane, Map 126, Lot 3, to construct a deck and stairs, in violation of the Madison Zoning Ordinances Article IV, Section 4.5C and Article V, Section 5.9C with the following relief:

- 1) The deck and stairs will be closer than the 75 feet from Silver Lake
- 2) The deck and stairs will be closer than 75 feet from the mean high-water mark of Silver Lake and closer to Silver Lake than the existing non-conforming structure

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CONFLICT OF INTEREST:

The Board was individually polled for any conflicts of interest with Case # 21-11: Mr. Lord – no, Mr. Gentile - no, Mr. McAllister - no, Mr. Rau – no, Mr. Totman - no. **MOTION** was made; seconded by Mr. McAllister. All approve

RULES OF PROCEDURE/ WAIVER REQUEST:

Mr. Lord reviewed the Rules of Procedure for this Hearing. There are no waiver requests.

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

PRESENTATION/ BOARD QUESTIONS: Mr. Cormier represented the owner of the property. He described the project. They are trying to improve a safety issue by extending the landing of the egress from the house. Mr. Lord made a **MOTION** to close the public hearing seconded by Mr. Totman. All approve.

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

- 1) DES Shoreline permit has been approved.
- 2) Net change in impervious area is 762 sq ft.
- 3) Patio is blue stone and will have permeable areas.
- 4) Maximum of three feet on existing non-conforming house.
- 5) One abutter was present and approves of this change.

DELIBERATION: Mr. Lord led a discussion of the 5 criteria for a Variance.

The variance will not be contrary to the public interest because there is no unduly or marked conflict with this request and the intent of the ordinance. The spirit of the ordinance is observed because the proposal improves the safety of the egress from the house. Substantial justice is done because there is no gain to the public if the variance is not granted and the use is consistent with the surrounding neighborhood. The value of the surrounding properties would not be diminished because the change is very minor and would not impact the surrounding properties. The abutter is supportive of the modification. The proposed use is a reasonable one because the minor change improves the safety of the property.

Mr. Gentile made a **MOTION** that the five criteria are met, Mr. Totman seconded. All approve

MOTION/VOTE

Mr. Lord made a **MOTION** to approve this request for a Variance to allow the deck and stairs to be no more than 3’ to the lake to improve the safety of entering and exiting the house; seconded by Mr. Gentile.

Rollcall Vote: Mr. McAllister – Aye Mr. Lord – Aye Mr. Rau - Aye Mr. Gentile – Aye
Mr. Totman - Aye

MOTION PASSED by a vote of 5 to 0.

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

ZONING ORDINANCE DISCUSSION: Mr. Ohlson discussed the letter from Atty Mahlia regarding 1.3b. He also informed the Board that the Planning Board is proposing removing the 50% rule from 1.3b. The Planning Board has scheduled a public hearing on November 3, 2021.

BUDGET: Mr. Gentile inquired about Atty Boldt’s fees. Mrs. Cyr will email the budget sheets to the members that were not in attendance. The budget sheets will be reviewed at the next meeting.

ADMINISTRATION: Members discussed the items required when submitting an application to the ZBA. Mr. Ohlson suggested that plans having wetland delineations have them stamped and signed by

the soil scientist. The Board would need eight copies of certified plot plans when an application is submitted.

ADJOURNMENT:

Mr. McAllister made a MOTION to adjourn the meeting; Mr. Rau seconded. All approved. The meeting adjourned at 9:05pm.

Respectfully Submitted,
Kim Cyr
Land Use Administrator