



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
January 19, 2022**

ATTENDANCE: Chairman Stuart Lord; Drew Gentile; Bebe Bartlett; Doug McAllister; Alternates George Rau, Marc Ohlson and Jake Martin

EXCUSED: Mark Totman

OTHERS PRESENT: Town Administrator Linda Shackford; MadTV Moselle Spiller; White Mountain Survey & Engineering's James Rines; Resident Sharon Schilling

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

Lord reminded all that Rines has been sworn in regarding this case at the December meeting.

Case # 21-15A – Continued from December 15, 2021 - Variances are requested by James Rines, Agent for Stephen & Lou-Ann Kennedy, for property located at 69 Caroline Road, Map 129, Lot 011, to construct an addition being less than 25 feet from the north and south boundary lines; less than 75 feet from the mean high-water mark of Silver Lake; and greater in size than 50% of the existing structure's first floor footprint within the 75 foot setback from Silver Lake in violation of Article I, Section 1.3B and Article V, Sections 5.9A & 5.9C of the Madison Zoning Ordinance *and* the expansion of an existing non-conforming garage with stairs and dormer being within the sideline setback on the east side and a shed roof being within the sideline setback on the west side in violation of Article I, Section 1.3B and Article V, Sections 5.9A & 5.9C of the Madison Zoning Ordinance.

MEETING NOTICE: Shackford reported that tonight's Public Hearing was posted on January 3, 2022 in the Town Hall upper and lower levels, Madison & Silver Lake Post Offices and on January 4, 2022 the Conway Daily Sun. All Abutters were re-notified by certified mail on January 3, 2022.

ELEVATION OF ALTERNATES: Alternate Ohlson was elevated to a full member for the continuation of this case containing a full 5-member board.

REGIONAL IMPACT: Lord stated that it had already been determined that this case has no regional impact.

PRESENTATION/ BOARD QUESTIONS:

James Rines, Agent of White Mountain Survey & Engineering which is now a division of Horizon Engineering, presented Case 21-15 at 69 Caroline Road, Tax Map 129-011, a 0.69 acre lot with 102.58' of frontage along Silver Lake. The current structure is 36.6' from the shoreline, the proposed addition

will be 43.3' from the shoreline, it will be 13.4' from the northerly boundary where the exiting is 18.4'. On the southerly side the proposed structure will be at 18.6' from the boundary with existing at 19.7'. The garage has an existing overhang at 4.9' for the shed roof that is actually further from the boundary line.

The owners have intentions of retiring here and have the necessity of adding a main floor bedroom for use by their son who has cerebral palsy, and with a second floor bathroom for their own use. The project also includes changing the driveway to lawn or other porous surface that will reduce impervious lot coverage from 41.7% to 35.5%, the height of new construction will be no higher than existing, there will be a plan for a new septic, and the applicant has received a permit from NH DES shoreland protection.

Gentile asked if a variance will be requested for the additional bedroom. Rines explained that no request for a variance will be made as the new system will be well away from the lake.

Lord noted that the exiting house is 751 square feet to which Rines referred to the shoreland application that read that the house and garage combined have a footprint of 1,581 square feet. Lord noted that the ordinance allows for an expansion of up to 50%. The Board calculated that including the existing 288 square foot deck with the house, the proposed 808 square foot addition gives an estimated expansion of approximately 80% versus the 50% allowed.

It was noted by Lord, and confirmed by Ohlson, that the Planning Board does not propose any changes to be made to this Article and Section of the Zoning Ordinance on this year's ballot as the Planning Board voted not to recommend the proposed article as written.

Rines confirmed the figures for the expansion of the shed and garage and it was agreed that it was less than a 50% expansion. Ohlson asked for elevation details with Rines confirming that neither the shed or garage will be taller than existing.

Rines added that aerial views of the neighborhood depict that the general trend is that buildings in the area are close to boundaries.

Rines read aloud from the application the reasoning for granting the application summarizing that this request is reasonable as it is a residential use. Gentile looked for a comparison to abutter properties with Lord seeing the neighbors to each side with larger homes and Bartlett seeing it as making the property more similar to abutters.

Lord asked for any public comments in favor or opposed. There were none.

Lord summarized facts:

- This is a small lakeside lot of 0.64 acres with zoning based upon 2-acre lots;
- The lot is narrow at 75' wide;
- The home was built prior to zoning;
- The house expansion is 1.1' closer to the south and 5' closer to the north than the existing;
- The proposed garage is 0.9' further from the lot line than the existing garage and more conforming;
- NH DES has issued a shoreland permit;
- The plan will reduce impervious surfaces by 1,300 square feet equaling a 6% reduction;

- The septic will be redesigned;
- The proposed expansion of the house footprint is 80% versus the 50% allowed by zoning;
- The shed is less than 50% expansion; and
- The shed and garage will be no taller than existing.

Motion by Lord, seconded by McAllister to close the public hearing. The motion passed **unanimously**.

Motion by Lord, seconded by McAllister that this application meets the all five of the criteria. The motion passed **unanimously**.

Motion by Lord, seconded by McAllister, to grant the building expansion of house and garage based upon plan submitted titled “Variance Application Plan for Stephen E. & Louann O. Kennedy 69 Caroline Road, Madison, NH” dated 11/23/2021 and amended 12/20/2021, because the expansions are consistent with the character of the neighborhood and the Board concurred with Rines’ explanation of why this case meet the five variance criteria included with application. The motion passed **unanimously**.

Lord read the provisions of the 30-day appeal period. Lord closed Case 21-15A.

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The Board welcomed their newest member, Jacob Martin, expressing their appreciation for his interest in joining the Board.

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Lord announced a **Request for Rehearing** of Case #21-13. Lord explained that this is a public meeting, but not a public hearing and no public input will be accepted. The request for rehearing is for a decision made by this Board at the December 15, 2021 meeting where a Special Exception for a Bed and Breakfast was granted. A letter submitted and signed by abutters Michael and Carleen Pfluger and residents Sharon and Kirk Schilling was received requesting the rehearing. Lord explained that this Board needs to determine if a rehearing is warranted based upon this Board having made a mistake or if there is new information to consider that was not presented at the original hearing. If a rehearing is granted then the case will be reheard with the new information or to correct the mistake.

In order to ask for the rehearing, the requestor must have standing, to which the Pflugers of 344 Bickford Road being an abutter have standing; and the Schillings, even though not an abutter, are at the end of the road and therefore, in Lord’s opinion, have standing as they are impacted by this decision.

The request for rehearing states that the Board used personal experience with Bed and Breakfasts to which Lord believes is this Board’s duty to use our personal experiences and in his opinion, this is not out of bounds. Gentile generally agreed with Lord but interprets the request as to whether this Board substantiated that the Bed and Breakfast is not a nuisance. It was recalled that discussion included that a 5 or 6 bedroom B&B will not created the noise that the conference center would while noting the two requests were separated from each other. Bartlett added the original discussion included differentiating between owner occupied and non-owner occupied and feels we do have a duty to use our general knowledge.

Gentile asked how the Notice of Decision was written. Shackford read the notice of decision aloud: “The request for a Special Exception was **GRANTED** by a 5-0 roll call vote of the Zoning Board of Adjustment at their December 15, 2021 meeting for an owner-occupied 5-bedroom Bed and Breakfast with the following conditions:

1. Bed and Breakfast will not operate when Town roads are posted; and
2. The septic system shall be reviewed as part of the approval.

This land use is in keeping with the Rural Residential nature of the area and meets the four conditions called out in the Madison Zoning Ordinances 4.2.B (Conditions to be met).”

Lord moved forward offering his opinion that the Trip Generation Analysis Report cited in the request for rehearing was reviewed in the public hearing with comments and questions accepted therefore Lord does not feel that is a valid reason. However, Lord feels that the Board did not consider the Class VI road and its location in regards to Section 5.9A and the requirement to be 75’ from the center line of a roadway.

Ohlson offered his experience regarding Class VI roads and the committee formed years ago determined that the road goes through the barn and out. Ohlson feels that anyone trying to prove that is a Class VI road would have a very hard time doing so and in his opinion doubts it is a Class VI road.

Gentile asked why we are considering the proximity of the house and road after it has existed for so many years. It was agreed that the fact that there is a request to change the use of the property is why 5.9A & C should be considered and the owner could ask for a variance to have the B&B within 75’ of the road. Lord feels that the Board would be on solid ground if we offer to rehear the case and ask the applicant to prove that they meet the criteria of 5.9A & C or request a variance. Ohlson spoke to the history of how Class VI roads were determined in Town citing a vote of Town Meeting to defend Class VI roads. Lord again sees this as new information.

Motion by Gentile, seconded by Bartlett, to rehear Case #21-13 based upon the new information presented regarding the status of the road. The motion passed **unanimously**.

Lord announced that this rehearing will take place on March 16, 2022 with Shackford contacting Agent Bergeron with the request to hear both the rehearing of Case #21-13 and the continuation of Case #21-14 in March.

APPROVAL OF MINUTES:

Motion by Lord, seconded by Rau to approve the minutes of December 15, 2021 as amended. The motion passed **unanimously**.

The Board thanked Lord for writing the report for the 2021 Town Report and all were pleased with its contents.

7:17 pm Motion by Lord, seconded by Rau to enter **Non-Public Session per RSA 91-A:3II (I)** Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present. Motion passed **unanimously** by roll call vote: Gentile – aye; McAllister – aye; Lord – aye; Bartlett – aye; Rau – aye; Ohlson- aye; Martin – aye

7:20 pm Motion by Lord, seconded by McAllister to come out of non-public session with no business having been transacted. Motion passed **unanimously** by roll call vote: Gentile – aye; McAllister – aye; Lord – aye; Bartlett – aye; Rau – aye; Ohlson- aye; Martin – aye

7:21 pm Motion by Lord, seconded by McAllister to close the public meeting. The motion passed **unanimously** by roll call vote: Gentile – aye; McAllister – aye; Lord – aye; Bartlett – aye; Rau – aye; Ohlson- aye; Martin – aye

ADJOURNMENT:

The meeting adjourned at 7:21 pm.

The next meeting of the Zoning Board of Adjustment will be held on February 16, 2022 at 6:00 pm.

Respectfully Submitted,

Linda Shackford
Town Administrator