



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
March 16, 2022**

ATTENDANCE: Vice-Chairman Drew Gentile; Doug McAllister; Alternates George Rau, Jake Martin and Marc Ohlson arriving during Case #22-02

EXCUSED: Mark Totman; Bebe Bartlett

OTHERS PRESENT: Town Administrator Linda Shackford; MadTV Aysia Morency; Residents Sharon Schilling, Peter Kondrat and Brandon McHenry

CALL TO ORDER: Gentile called the meeting to order at 6:02 pm and led those in attendance in reciting the Pledge of Allegiance.

ELEVATION OF ALTERNATES: **Motion** by McAllister, seconded by Gentile to raise Alternates Rau and Martin to voting members to tonight's meeting. The motion passed **unanimously**.

Case #21-13 Rehearing - Special Exception is requested by Shawn Bergeron, Agent for Hillary Twigg-Smith, for property located at 397 Bickford Road, Map 223, Lot 7, to ask for a Special Exception for a Lodging House (Bed and Breakfast) at this property as specified in the Zoning Ordinance Article 4.2 (B)(7).

A request to continue this Case #21-13 and also Case #21-14 to the April meeting was made by Twigg-Smith's agent Shawn Bergeron because there is still some technical work to be done regarding research.

Gentile opened the public hearing for Case #21-13.

Sharon Schilling, resident, stated that the Board received letters from several families in the area of the proposed Bed and Breakfast that contained requests for the case to be continued until the June meeting. The families reasoning was that they wanted to be able to speak to the case in person and they will not be back in the area until June. It was also hoped that research regarding the status of road on the Twigg-Smith property would be complete by June. Gentile noted that Schilling was sworn in at the original hearing. No other public asked to speak.

MEETING NOTICE: Shackford reported that tonight's Public Hearing notice was posted on March 9, 2022 in the Town Hall upper and lower levels, Madison & Silver Lake Post Offices and published on March 10, 2022 the Conway Daily Sun. Abutters were re-notified by certified mail on March 10, 2022.

Conflict of Interest: All members stated they had no conflict of interest in this case.

Waiver Request: There are no waivers requested by the applicant.

Regional Impact: The Town of Eaton was notified of the potential regional impact in conjunction with Case #21-14.

Motion by McAllister, seconded by Rau to close the public comment section of tonight’s meeting. The motion passed **unanimously**.

Gentile entertained discussion regarding the granting of the continuance. Gentile feels it is important to be sensitive to both the applicant and abutters’ needs and suggests a continuance to the April meeting with the possibility of a further continuance.

Motion by McAllister, seconded by Rau to continue the rehearing of Case #21-13 to the April meeting at 6:00 pm allowing further communication between all parties. The motion passed **unanimously**.

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Case #21-14 Continued - Special Exception is requested by Shawn Bergeron, Agent for Hillary Twigg-Smith, for property located at 397 Bickford Road, Map 223, Lot 7, to ask for a Special Exception for a Conference Center Facility at this property as specified in the Zoning Ordinance Article 4.2 (B)(8).

Conflict of Interest: All members stated they had no conflict of interest in this case.

Waiver Request: There are no waivers requested by the applicant.

Regional Impact: The Town of Eaton was notified of the potential regional impact.

Sharon Schilling, resident, requested that the Board continue this case to the June meeting to allow the opportunity for abutters to be heard. Schilling sees communication as vital and hopes the Board would agree that the comments from abutters and those with standing in this case, which number as high as 35, are important.

Motion by McAllister, seconded by Martin to close the public comment section of tonight’s meeting. The motion passed **unanimously**.

Gentile feels it makes sense to continue this case as it is in conjunction with Case #21-13.

Motion by McAllister, seconded by Rau to continue Case #21-14 to the April meeting at 6:00pm to be able to provide more complete communication amongst the Board and public. The motion passed **unanimously**.

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MEETING NOTICE: Shackford reported that tonight's Public Hearing notice was posted on March 9, 2022 in the Town Hall upper and lower levels, Madison & Silver Lake Post Offices and published on March 10, 2022 the Conway Daily Sun. Abutters were notified by certified mail on March 10, 2022.

Case #22-01 – Variances are requested by Brandon McHenry for property located at 14 Little Shore Drive, Map 109, Lot 092, in the Village District of Eidelweiss to construct a shed on the 0.55-acre parcel, in violation of Madison Zoning Ordinance Article V, Section 5.9F because the constructed shed is located less than 65 feet from the center line of Little Shore Drive and less than 20 feet from the northern boundary line.

Gentile informed the applicant that he is entitled to a five-member board. The Board tonight is only four members and it will be necessary to obtain three affirmative votes. The applicant was offered the option to continue to a later date when a five-member board would be available. The applicant decided to proceed with the four-member board.

Conflict of Interest: All members stated they had no conflict of interest in this case.

Waiver Request: There applicant did not supply a certified plot plan. The applicant has the desire to proceed without the certified plot plan.

Motion by Martin, seconded by McAllister to grant a waiver from the requirement of submission of a certified plot plan. The motion passed **unanimously**.

Regional Impact: All members agreed that there is no regional impact caused by this case.

Swearing In: Gentile required all public in attendance that will speak to this case to stand and affirm that they “swear that the testimony that you will give pertaining to this Case will be truthful under penalty of perjury?”.

Gentile opened the public hearing.

Brandon McHenry, applicant and owner of 14 Little Shore Drive, explained that he and his family live full time at the residence. The shed, already in place, was purchased in Albany and the seller assured that no permit was necessary. The placement, which is the only area on the lot that where it could go, is less than 20’ from the sideline and less than 65’ from the center line of Little Shore Drive. The slope of the lot also limits the placement. McHenry would like to keep his property looking kept and clean explaining that the shed would house his children’s bicycles and toys.

The Board had no questions for the applicant with all members having made a site visit. Gentile noted that this applicant is being reviewed without prejudice that the shed is already on the property.

There were no comments from the public regarding this case.

Finding of Facts:

1. The current location of the shed is the only possible location on the property.
2. Immediate abutter commented on how good the shed looks.
3. The shed location and appearance are consistent with other properties in the neighborhood.
4. The unique characteristics of the lot make this the case; the lot has steep inclines and soft soil making placement and access to a shed impractical in other locations. The natural extension of the drive, which is where the shed is, is flat.
5. The lot is very small, 0.55 acres so meeting the dimensional requirements of the zoning ordinance is not possible.
6. There is no garage or other outbuilding for storage on the property and storage in the main structure is very limited for a full-year resident with a family.
7. The shed is already installed, and the variance request is due to the code enforcement officer citing the owner for not having a building permit.

Findings on the Five Conditions for a Variance:

1. The variance will not be contrary to the public interest
2. The spirit of the ordinance will be observed (answers for both 1 and 2 together):
 - a. It will not alter the character of the neighborhood because it is aesthetically fitting, increases the orderliness of the property by providing storage for normally required equipment, and matches similar practice in the neighborhood.
 - b. The shed will have no negative impact on health or safety; orderliness has a positive effect on safety.
3. Substantial justice is done because
 - a. The storage is a gain not only the individual but a gain (rather than a loss) to the public by reducing clutter.
 - b. Denying the variance and requiring the removal of the shed would be a significant injustice because it would remove needed storage for normal equipment such as a snowblower and bicycles.
4. The values of surrounding properties are not diminished because
 - a. The increase in storage and orderliness increases the value of the property,
 - b. Thus, positively affecting neighboring property values.
5. Literal enforcement would result in unnecessary hardship because
 - a. The dimensional requirements of the ordinance cannot be met on this lot due to its small size and steep inclines.
 - b. The shed is a reasonable, even necessary, addition to the property because the owner, as a full year resident with a family, needs the storage which is not available in the main structure.

Gentile asked the Board if they feel there is a reason the criteria is not met. The Board agreed that there is no reason.

Motion by Gentile, seconded by McAllister to approve the request for a variance for a shed based upon the applicant meeting the five criteria cited.

Roll call Vote: McAllister – Aye Rau - Aye Gentile – Aye Martin - Aye
 The motion passed **4-0** by roll-call vote.

Gentile read the provisions of the 30-day appeal period. Gentile closed Case #22-01.

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MEETING NOTICE: Shackford reported that tonight's Public Hearing notice was posted on March 9, 2022 in the Town Hall upper and lower levels, Madison & Silver Lake Post Offices and published on March 10, 2022 the Conway Daily Sun. Abutters were notified by certified mail on March 10, 2022.

Case #22-02 - Variance is requested by Peter Kondrat, Agent for SPK Trust for property located at 9 Blinden Drive, Map 105, Lot 24, in the Village District of Eidelweiss to construct a deck on the 0.52-acre parcel, in violation of the Madison Zoning Ordinances Article IV, Section 4.5C because the house and deck will be less than 50 feet from a wetland area over 0.25 acres in size.

Marc Ohlson joined the meeting.

Conflict of Interest: All members stated they had no conflict of interest in this case.

Waiver Request: There applicant did not supply a certified plot plan. The Board was in agreement that a certified plot plan would not benefit this application, noting that this property had another application before the Board recently and it did not have a certified plot plan then.

Motion by McAllister, seconded by Rau to grant a waiver from the requirement of submission of a certified plot plan. The motion passed **unanimously**.

Regional Impact: All members agreed that there is no regional impact caused by this case.

Swearing In: Gentile required all public in attendance that will speak to this case to stand and affirm that they “swear that the testimony that you will give pertaining to this Case will be truthful under penalty of perjury?”.

Peter Kondrat, applicant and owner, explained that this plan, drawn by Mark McConkey, shows a change to the location of the deck from the originally approved location. The proposed change to the 10’x36’ deck moves it from the road side of the house to the south side of the house and decreases in size to 10’x24’ which is a 23% decrease. The deck will now be further from the wetland and will be aesthetically more pleasing.

There was no public present to make comment on this application.

Findings of Fact:

1. This application changes the location of the deck so that there is an increase in the setback from 13.81 feet to 16.25 feet from the nearest wetland.
2. The driveway will have a slightly decreased incline.
3. The overall footprint of the deck will be reduced by 23%.
4. This is an updated variance request for cases 21-10 and 21-10-1.
5. The house already exists, it was built with a valid variance (21-10 and 21-10-1).
6. The unique characteristic of this lot is its small size, .52 acres, and the significant encroachment of wetlands which reduce the building envelope under the zoning ordinance to an impractical small size, requiring relief for the setback requirements.
7. The driveway will no longer have the deck immediately on its edge, enhancing the safety of the deck and the drive.

Findings on the five conditions for a variance:

1. The variance will not be contrary to the public interest
2. The spirit of the ordinance will be observed (answers for both 1 and 2 together):
 - a. The house was already approved as being in character with the neighborhood in cases 21-10 and 21-10-1.
 - b. The increase in setback to the wetlands is an improvement on the potential impact to wetlands and this is an improvement to what was already deemed to be no risk to public health or safety
3. Substantial justice is done because
 - a. This change facilitates a safer drive for the owner and lower risk to the deck structure from autos or snow removal equipment.
4. The values of surrounding properties are not diminished because

- a. The house is consistent with the neighborhood and this improvement will enhance the property value, thus having no negative impact on neighborhood values.
- 5. Literal enforcement would result in unnecessary hardship because
 - a. There would be no benefit to the public at all by denying a request which results in further setback from the wetlands
 - b. The changes are reasonable because they enhance the usability and safety of the driveway.

Gentile asked the Board if they feel there is a reason the criteria is not met. The Board agreed that there is no reason.

Motion by McAllister, seconded by Rau to approve the request for a variance for the location of the deck, as per “Zoning Plot for Neil & Marianne Donga” dated 01/05/2022, based upon the applicant meeting the five criteria cited.

Roll call Vote: McAllister – Aye Rau - Aye Gentile – Aye Martin – Aye Ohlson - Aye
The motion passed **5-0** by roll-call vote.

Gentile read the provisions of the 30-day appeal period. Gentile closed Case #22-02.

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APPROVAL OF MINUTES: Motion by McAllister, seconded by Rau to approve the minutes of January 19, 2022 as amended to include in the approval of Case #21-15A that the Board concurred with Mr. Rines’ explanation of the five criteria as per the application. The motion passed **unanimously**.

ELECTION OF OFFICERS: The election of officers, as per the Rules of Procedure, will occur at the next meeting.

Gentile would like to raise awareness of this Board’s meetings. It was suggested that it be notice posted on social media. Shackford suggested that it be posted on the Town’s webpage prior to the meeting each month with the Board agreeing to taking that step. Shackford or Cyr will be sure that is done.

AMENDMENT TO RULES OF PROCEDURE: Gentile suggested a change to the Order of Business section of the procedures. They currently read:

4. Order of Business. The order of business for regular meetings shall be as follows:

- a. Call to order by the Chairman
- b. Roll call by the Administrative Assistant
- c. New applications
- d. Continued applications
- e. New business
- f. Approval of minutes
- g. Communications and miscellaneous
- h. Other business
- i. Adjournment

to which Gentile suggests changing the order of c. and d. to read:

4. Order of Business. The order of business for regular meetings shall be as follows:

- a. Call to order by the Chairman
- b. Roll call by the Administrative Assistant
- c. Continued applications*
- d. New applications*
- e. New business
- f. Approval of minutes
- g. Communications and miscellaneous
- h. Other business
- i. Adjournment

and add that the Chairman has the discretion to change the Order of Business.

Gentile noted that as per these same Rules of Procedure, this is the first reading of the change into the record. It will be read into the record again at the April meeting with a vote to approve or disapprove at the May meeting.

ADJOURNMENT: Motion by McAllister, seconded by Ohlson to adjourn the meeting. The motion passed **unanimously**. The meeting adjourned at 7:51 pm.

Respectfully Submitted,

Linda Shackford
Town Administrator