



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
April 20, 2022**

ATTENDANCE: Vice-Chairman Drew Gentile; Bebe Bartlett; Doug McAllister; Marc Ohlson; Alternates George Rau and Jake Martin

EXCUSED: Mark Totman

OTHERS PRESENT: Town Administrator Linda Shackford; MadTV Moselle Spiller; Ron Briggs; Charles Williams III; Sharon Schilling

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

Cases #21-13 and #21-14 were tabled to later in the meeting.

MEETING NOTICE: Shackford reported that tonight's Public Hearing notice was posted on April 11, 2022 in the Town Hall upper and lower levels, Madison & Silver Lake Post Offices and published on April 13, 2022 the Conway Daily Sun. Abutters were notified by certified mail on April 12, 2022.

Case #22-03 – Variances are requested by Charles Williams III and Amy Williams for property located at 43 Loon Lane, Map 132, Lot 010, to construct a new structure that the height will be taller above sea level than the highest roofline of the existing structure within the 75-foot setback from Silver Lake on violation of Article I, Section 1.3B of the Madison Zoning Ordinance.

Gentile added that this notice did not include the applicant's request for an equitable waiver of dimensional requirements. However, a request for a variance should have been made, not the request for an equitable waiver. The Board agreed to proceed with the hearing, with the expectation that it will be continued, and a renotification of abutters will be made at the Town's expense.

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

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: Briggs stated they would like a waiver of the certified plot plan. When asked for the reason, Briggs explained that all the pertinent information is included in the application from other sources. The Board considered this sufficient.

Regional Impact: All members stated that they could see no regional impact in 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?”.

The applicant and his agent were offered the option of separating the cases, as indicated earlier because the equitable waiver of dimensional requirements should be a request for a variance or keeping them together in one case. The applicant and agent agreed to proceed with them as one case.

Ron Briggs of Briggs Land Surveying presented for the applicant a plan to remove and rebuild a home at 43 Loon Lane. The existing conditions place the deck at 16.6’ from the lake and the building at 27.1’ from the lake. The new conditions would place the deck at 17.5’ from the lake and the building at 43.7’ from the lake. Briggs calculated that the new footprint of the building would have 1,668 square feet within the 75’ setback which is 12 square feet less than the 50% allowable expansion. The only reason this is before the board is because of the height issue.

The existing roof line from the lowest grade puts the existing highest point at 496.65’ above sea level, the proposed at 504.75’ above sea level with the maximum allowed at 507.25’ above sea level.

Gentile summarized that the home is going from 1 ½ stories to 2 stories and is under the maximum but increasing the roof height of a non-conforming structure. Briggs explained that the current home takes on water due to the water table and this elevation is important in eliminating that issue. Ohlson asked if it will be a full basement. Williams stated yes, at about 7’ ceiling height. Ohlson confirmed that the setback from the shoreline is increasing. Briggs responded it is going from 27.1’ to 43.7’ away from the lake. It was confirmed that the shed, house and garage will all be incorporated in to the new structure.

Ohlson noted that the deck is only one foot further away from the lake so that is the only real gain. Ohlson brought up the fact that the definition of footprint was added to the zoning ordinance in March. The definition of footprint was read aloud “The outermost exterior dimensions of a structure as viewed from above, including any permanent extensions such as balconies, decks (attached or unattached), steps, overhangs and chimneys. This footprint is not measured in volume”.

Briggs reasoned that the definition of footprint as it pertains to Article 1.3B, which is different than that added by Town Meeting vote, is specific to that article and there was no amendment to Article 1.3B by a vote of Town Meeting.

Gentile’s calculations find that if the new definition of footprint is used in this case it would be greater than the allowable 50% increase.

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 May meeting with the possibility of a further continuance.

Findings of fact:

1. The increase in the non-conforming footprint is less than 50% of the original non-conforming footprint, where 2,304 sq ft is the original footprint, 1,120 of which is non-conforming. The non-conforming portion of the new footprint is 1,668 sq ft where 1,680 is the maximum allowable expansion.
2. Set back from the lake for the deck increases.
3. Set back from the lake for the structure increases.
4. The increase in height for the new structure is approximately 8 feet higher than existing.
5. The reason for the variance application is the increase in height of the new structure which is not permitted for a non-conforming structure. At 504.75 feet it remains lower than the maximum normally permitted by code at 507.25 or 35 feet above grade.
6. The existing house, deck, garage, and woodshed will be removed.
7. The garage meets the 75 foot setback requirement to the center of Loon Lane.
8. The basement floor of the new structure is being raised approximately 1 foot so that it remains above the water table's seasonal high.

Motion by McAllister, seconded by Bartlett to close the public hearing portion of this case. The motion passed unanimously.

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):
Because the new house will
 - improve the general aesthetics of the neighborhood
 - be less non-conforming with respect to the setback from the lake,
 - remain under the normal code limit of 35 feet above grade for height while not obstructing any neighbor's view or being objectionably high seen from the lake
 - There is an abutting home with similar height.
 - Thus, the variance would not change the character of the neighborhood or pose any threat to the health or safety of the community.
3. Substantial justice is done because
The new construction removes the annual flooding in the existing basement, significantly improves the usability of the property and enhances the aesthetics of the neighborhood.
4. The values of surrounding properties are not diminished because
The new structure is more appealing architecturally than the existing house and its increased value will have a positive effect on neighborhood property values.
5. Literal enforcement would result in unnecessary hardship because
The existing house has seasonal flooding in the basement. The height variance would not be required except that current structure is non-conforming in its setback to the lake. Given the character of the property and the neighborhood, the expansion is reasonable and literal enforcement would offer no substantial gain to the public or the abutters.

In summary, by a roll call vote, no member found justification to prevent the granting of this variance.

Motion by Ohlson, seconded by Bartlett to grant this request for variance with a height of no greater than 504.75' above sea level. The motion passed **unanimously** by roll call vote.

The applicant and agent were informed that this case would be continued and that there would be no decision signed because if new information came to light regarding how the footprint was handled, it might affect the application for the height variance.

Gentile read the provisions of the 30-day appeal period extending it to 60 days.

Motion by McAllister, seconded by Bartlett to continue Case #22-03 to the May meeting at 6:00 pm. The motion passed **unanimously**.

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Case #21-13 Continued - Special Exception is requested by Shawn Bergeron, Agent for Hillary Twigg-Smith, for property located at 397 Bickford Road, Map 223, Lot 007, 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).

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

Gentile announced that a letter was received from the applicant’s agent, Shawn Bergeron, with a request to continue this case until May while the Board has received requests from abutters for this case to be continued to June. Gentile opened the hearing to public discussion.

Sharon Schilling, resident, reiterated her past request to continue this case until June which would allow more abutters from out of town to attend and allow for clearer communication.

Gentile closed the public portion of the hearing.

Motion by Bartlett, seconded by Rau to continue Case #21-13 to the June 15th meeting at 6:00pm. 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 007, 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.

Gentile opened the hearing to public discussion.

Sharon Schilling, resident, reiterated her past request to continue this case until June which would allow more abutters from out of town to attend and allow for clearer communication.

Gentile closed the public portion of the hearing.

Motion by McAllister, seconded by Bartlett to continue Case #21-14 to the June 15th meeting at 6:00pm. The motion passed **unanimously**.

Gentile asked Schilling if an approximate number of abutters that will be attending could be communicated to the Board once the meeting date is closed. It may necessitate moving the meeting to a larger venue.

APPROVAL OF MINUTES: Motion by Ohlson, seconded by Rau to approve the minutes of January April 20, 2022 as amended to include:

- Noting the time of Ohlson’s arrival during Case #22-02;
- Page 1, paragraph 6, add the word “meeting” after April; and
- Page 2, paragraph 7, change the word sanding to standing.

The motion passed **unanimously**.

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 second reading of the change into the record. It will be read into the record again at the May meeting with a vote to approve or disapprove at that meeting.

ELECTION OF OFFICERS: Gentile was unanimously voted in as the Chairman of the Zoning Board. The appointment to the position of Vice-Chairman was continued to the May meeting.

ADMINISTRATION: The NH Municipal Association is offering their Spring Conference Series for any members that would like to attend.

ADJOURNMENT: Motion by McAllister, seconded by Rau to adjourn the meeting. The motion passed **unanimously**. The meeting adjourned at 7:36 pm.

Respectfully Submitted,

Linda Shackford
Town Administrator