



**TOWN OF MADISON  
ZONING BOARD OF ADJUSTMENT  
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**ZBA MINUTES  
May 18, 2022**

**ATTENDANCE:** Chairman Drew Gentile; Doug McAllister; Bebe Bartlett; Alternates Marc Ohlson and George Rau

**EXCUSED:** Mark Totman and Alternate Jake Martin

**OTHERS PRESENT:** Town Administrator Linda Shackford; MadTV Aysia Morency; Agent Shawn Bergeron; Sharon Schilling; Mark Tapper; and members of the public.

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

Election of Officers was tabled to later in the meeting with a **motion** by McAllister, seconded by Rau with full agreement of the Board.

**MEETING NOTICE:** Shackford reported that tonight's Public Hearing notice was posted on May 3, 2022 in the Town Hall upper and lower levels, Madison & Silver Lake Post Offices and published on May 6, 2022 the Conway Daily Sun. Abutters were notified by certified mail on May 4, 2022.

**Case #22-03 – Continued** - Variances are requested by Charles Williams III and Amy Williams for property located at 43 Loon Lane, Map 132, Lot 010, for an accessory structure to remain within 0.5 feet of one boundary line and within 11.7' of another boundary line, where 25 feet is required and 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. The Board will review the footprint calculations present by the Agent.

Gentile began with advice given to him from Attorney Boldt regarding Section 1.3B of the Zoning Ordinance. Attorney Boldt is of the opinion that based upon the Connolly v Madison case the square footage calculations are based upon the first-floor square footage. The question as to whether appendages are included in that square footage is a determination made by this Board. Ohlson, as Planning Board Representative, offered from discussion at their meeting, that the Planning Board did not take 1.3B into consideration when defining footprint back in March of this year because the definition was done to assist the Zoning Officer in his daily determinations. Ohlson added that the Planning Board attorney feels the more restrictive would carry the day with Gentile adding that the ZBA attorney feels that without a clear Planning Board determination the new definition takes over. Bartlett feels that if the writer was ambiguous then the decision goes in favor of the non-writer.

**Swearing In:** Gentile confirmed this was done at the April meeting and it continues with the case.

**Elevation of Alternates: Motion** by McAllister, seconded by Bartlett to raise Alternates Rau and Ohlson to voting members to tonight’s meeting. The motion passed **unanimously**.

**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 as per the April meeting.

**Regional Impact:** All members stated that they could see no regional impact in this case.

Gentile opened the public hearing beginning with that Briggs was informed prior to this meeting by Land Use Administrator Cyr to do a recalculation of the square footage for the application.

Briggs, citing the Connolly v. Town of Madison case, read from the decision and used it to further explain his same position at the April meeting. Gentile summarized Briggs’ comments as asking the Board to continue to interpret the 50% in 1.3B as a 50% expansion as related to the non-conforming portion of the structure to which Briggs agreed. It was noted that the Connolly v. Town of Madison case was remanded to the trial court but nothing more happened.

Gentile closed the public hearing portion of the meeting for the Board to deliberate.

Finding of Fact:

1. The question to be answered is whether the expansion exceeds the 50% limitation which would then require a variance.
2. To answer this question the board needed to resolve two legal ambiguities:
  - a. Whether the 50% expansion applies only to the non-conforming portion of the first-floor footprint or to the entire first-floor footprint.
  - b. Whether the wording in 1.3b, “not including decks...,” or the wording in the 2022 definition of footprint, “including permanent extensions...,” governs the calculation of the area of the footprint for the purpose of measuring the expansion of a non-conforming structure.
3. The ZBA’s attorney, Chris Boldt, advised
  - a. Regarding the expansion: the ZBA is advised to follow the results of Connolly v Madison in using the entire first-floor footprint until the Planning Board updates the wording.
  - b. Regarding the conflict in wording between the 2022 definition of “footprint” and paragraph 1.3b: in the absence of any documentation from the Planning Board to support using 1.3b as the governing wording on the issue, the ZBA is advised to allow the more recent wording to govern the issue because the term “footprint” only occurs in the zoning ordinance in 1.3b.
4. The agent provided the three calculations:
  - a. Based on 1.3b and expansion applying only to the non-conforming portion of the first-floor footprint: 148% from 1120 to 1668 where 1680 is the max.
  - b. Based on 1.3b and expansion applying to the entire first-floor footprint: 254% increase from 1120 to 2848.

- c. Based on 1.3b overridden so that all extensions are included in the footprint: 265% 1476 to 3914 sq ft.

**With respect to the application of the 50% limitation:**

5. Mr. Briggs argued that the supreme court case was not sufficiently conclusive to reverse the standing procedure of the ZBA in applying the 50% limitation only to the non-conforming portion of the footprint.
6. The board noted that there was 1 judge in the Superior Court and 5 on the Supreme Court and that in the balance, 3 agreed and 3 disagreed, and the case was remanded to the superior court, making it clear that the courts did not clearly see the intent of the ordinance.
7. Mr. Ohlson commented that it was the intent of the Planning Board to apply the 50% limitation to the non-conforming portion of the footprint.

**With respect to the conflict in the definition of the term footprint**

8. Mr. Briggs argued that the wording of the ordinance supersedes the more general definition.
9. Mr. Ohlson, Chairman of the Planning Board indicated that the Planning Board did not count the number of times the term footprint was used in the ordinance when the definition was revised and intended for the wording of 1.3b to base the calculation of the first-floor footprint on the first-floor print of the structure without extensions.
10. Mr. Ohlson's testimony meets the criteria of documenting the Planning Board's intent.

Gentile turned the floor over to Briggs for discussion of the variance for the tree house. Briggs noted that the abutter, Mr. Trochi, is agreeable to the tree house staying in place. Briggs went on to explain that the treehouse is in the corner of the lot at 0.5' from one side line and 11.7' from another. The setback complies with the lake and the structure does not obstruct views of the lake which was shown by the reference of a map.

Williams explained that this project slowly grew over the years with help of friends and is enjoyed by the local neighborhood children. It has insulation, electricity and smoke detectors but no kitchen or plumbing. Gentile asked if there is an option to relocate the treehouse to which Williams explained that it is built around a clump of oak trees making it impossible to move without a crane and a dumpster. Williams estimated it would cost \$5,000 to remove the 14'x16' 2-story treehouse that is about 7' off the ground. Williams voluntarily brought the tree house non-conformity to the Town's attention.

**Motion** by Ohlson, seconded by Bartlett to close the public hearing. The motion passed unanimously.

Discussion amongst the Board occurred with no public input about if a variance is required in this case. Gentile asked how the Board would like to handle the ambiguity regarding the definition of footprint and how should the Board proceed citing the Connolly v. Town of Madison.

**Motion** by Ohlson, seconded by McAllister to accept the language in 1.3B as being the definition of a footprint to go forward with respect to the expansion of a non-conforming structure. The motion passed **unanimously**.

The Board discussed and offered their opinions on whether or not the applicant should be requesting a variance.

By rollcall vote it was determined that Ohlson, McAllister, Bartlett and Rau do not see the need for a variance request regarding the footprint of the non-conforming structure; Gentile felt it was necessary. The Board did not require the applicant to request a variance.

Findings of fact:

1. The treehouse was built in 2014, eight years ago
2. The setback violation was brought to the town's attention by the owner and his agent.
3. The treehouse cannot be moved since it is built around 3 oak trees
4. The treehouse is approximately 14' x 16' with a smaller second story (for a total of more than 300 sq ft) and is approximately 8 feet off the ground.
5. The cost of construction was approximately \$30,000
6. It was built to IRC specs with respect to structure, insulation, wiring and windows.
7. The treehouse has no cooking facilities or sanitation but does have electricity.
8. The treehouse does not block anyone's view of the lake, take light away from any neighboring garden or structure, and fits the neighborhood architecture. Because of the topography, no structure will be built where the treehouse would obstruct the view.
9. Removal is estimated to cost on the order of \$5,000.
10. The neighbors have had access to the treehouse and enjoyed it as well.

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 aesthetics of the treehouse are consistent with a normal home construction so that it does not change the character of the neighborhood but rather enhances the outdoor enjoyment aspect of the lake house location.
  - b. Because its structure was built to the IRC, it poses no threat health or safety
3. Substantial justice is done because
  - a. There is no benefit to the town or abutters in requiring its removal. It would be a loss to the neighborhood and represent a loss to the owner of over \$30,000 in construction and removal costs.
4. The values of surrounding properties are not diminished because
  - a. The structure is aesthetically pleasing, fits the nature and purpose of the neighborhood. It can in no way be considered an eyesore.
5. Literal enforcement would result in unnecessary hardship because
  - a. The high cost of removal would result in no substantial benefit to the town or neighbors.
  - b. There is no fair and substantial advancement of the purpose of the ordinance since the unique characteristics of its location poses no imposition on neighbors now in or in the foreseeable future and the structure enhances and fits the purpose of the rural residential area.

**Motion** by Bartlett, seconded by McAllister to grant the variance based upon the five criteria which reflect that the structure does not cause a visual obstruction or hazard to neighborhood and the removal would cause undue financial hardship. The motion passed unanimously.

Gentile read the provisions of the 30-day appeal period. Gentile closed Case #22-03.

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**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 third reading of the change into the record which allows for a vote to be made to accept the changes.

**Motion** by Rau, seconded by Ohlson to accept the changes to the Rules of Procedure. The motion passed **unanimously**.

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

- Page 1, paragraph 8, change the word continue to proceed;
- Page 2, paragraph 4, change the word continue to proceed; and
- Page 2, paragraph 11, change the word April to May.

The motion passed **unanimously**.

**ELECTION OF OFFICERS:** Gentile will contact Martin and ask if he would be willing to be elevated to a full member and serve as the Vice-Chairman. This will be discussed again at the June meeting.

**ADMINISTRATION:** The Board agreed to schedule the June meeting to be held at the elementary school gymnasium.

The Board agreed that at the June meeting the order of the cases will be Case #21-14 and then Case #21-13.

**ADJOURNMENT: Motion** by McAllister, seconded by Bartlett to adjourn the meeting. The motion passed **unanimously**. The meeting adjourned at 8:46 pm.

Respectfully Submitted,

Linda Shackford  
Town Administrator