



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

ATTENDANCE: Chairman Drew Gentile; Doug McAllister; Bebe Bartlett; George Rau; Jake Martin; Alternate Marc Ohlson

EXCUSED: Alternate Mark Totman

OTHERS PRESENT: Town Administrator Linda Shackford; MadTV Carol Dandeneau; Shawn Bergeron; Sharon Schilling; other members of the public

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

ELEVATION OF ALTERNATE: A full board is in attendance; elevations are not necessary.

Shackford read aloud **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 has no conflict of interest in this case via roll call.

Regional Impact: The Town of Eaton was notified with no response.

Bergeron spoke to the written request to continue **Cases #21-14 and #21-13**. Bergeron explained the reason for the request as relevant to Case #21-13 because of the location of the home in relationship to Churchill Road. The Board of Selectmen have decided to uphold the Town Meeting vote to defend Class VI roads based upon the road study of 1999. The previous homeowners placed a pool in Churchill Road and the current owner moved a barn in the road that basically eradicated the beginning section of the road. The solution being proposed to the Selectmen, to which they have conceptually agreed, would be to relocate the road, still on the applicant's property, following the procedure for a road layout.

Gentile asked when the pool was installed. Bergeron responded the 1980's. Gentile asked when the barn was moved. Bergeron responded late 1990's to which Schilling stated 2001.

Sharon Schilling, 537 Bickford Road, stated that the applicant is still waiting on a decision of the Board of Selectmen because the Board only agreed to look at a proposal. Schilling advocated for the withdrawal of these applications because it is taking too much time and is disingenuous to all that are involved adding the application could be withdrawn without prejudice.

Bergeron stated that the Class VI road is the key to this issue being resolved and a continuance to December is nothing that the law does not allow.

Schilling feels if it is continued to December the abutters will not be available as they are not here that time of year; a continuance does no justice.

Bergeron hopes this will all be resolved by the end of 2022 and if not, he would ask his client to consider a withdrawal.

Gentile swore in Ann Cody of 538 Bickford Road. Cody commented that she does not want Bickford Road to be commercial, it is not set up for such use.

Rau asked if ZOOM could be used to allow abutter comment. It was decided to postpone that discussion until another time.

Gentile swore in Sanders Witman, 374 Bickford Road, Witman concurred with Cody's comments not to commercialize Bickford Road and noted that abutters have weighed heavily against both applications.

Gentile swore in Carol Felice, Felice asked if the applicant meets the criteria for a special exception does this board have to grant it. Gentile said if the applicant meets the criteria the Board is obligated to grant it.

Gentile swore in Jemima Farwell, Downs Road, Farwell asked if the meeting proposed by Bergeron to meet with the abutters and neighbors is still an option with Farwell hoping it can happen this summer. Bergeron suggested the week of Old Home Week stating he will send out some dates on Monday to Schilling to assist in facilitating a meeting.

Motion by McAllister, seconded by Martin to close the public hearing for Case #21-14. The motion passed **unanimously**.

The Board discussed the options of a continuation to December, a withdrawal without prejudice or a denial without prejudice. Bartlett questioned if a continuance is appropriate or simply start over. Rau hopes there is enough information from the other boards to be able to act in December. Ohlson feared that a continuation to December would not allow this to be heard at an earlier meeting if the road issue is cleared sooner. Bartlett thought to discuss the four criteria and if not enough information, then continue.

Motion by McAllister, seconded by Rau to continue Case #21-14 to December. The motion passed **unanimously**.

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Gentile opened **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 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).

Gentile read aloud from the Zoning Ordinance Article 1.3A referenced in the application.

Gentile opened the public hearing asking the Board to consider the continuance of this case.

Bergeron asked for the continuance to December in hopes that the road layout will be complete and relocated to a location further away from the house.

Schilling re-stated that the Board should consider accepting a withdrawal or denial of the application without prejudice.

Motion by McAllister, seconded by Bartlett to close the public hearing for Case #21-13. The motion passed **unanimously**.

Motion by Rau, seconded by Martin to continue Case #21-13 to the December meeting. The motion passed **unanimously**.

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Shackford read aloud **Case #22-04** – Variance is requested by Dennis Mazzone for property located at 60 Saxon Road, Map 128, Lot 26, the shed was constructed without a building permit and was placed within 1.6’ of the south boundary line and within 6.9’ of the east boundary line in violation of Article V, Section 5.9A of the 2018 Madison Zoning Ordinance requiring setbacks of at least twenty-five (25) feet from boundary lines. Request for an equitable waiver of dimension requirements from Article 5.9 section A of the zoning ordinance to permit a portion of the deck within 24.8’ of the rear property line and a portion of the existing house (1984 construction) to be within 22.2’ of a side property line.

Conflict of Interest: All members stated they has no conflict of interest in this case via roll call.

Waiver Request: There were none.

Regional Impact: All members stated they see no regional impact in this case via roll call.

Swearing In: Gentile sworn in all present that were to speak to this case.

Mazzone explained that he is requesting a variance for a shed on his property that was built without a permit and a portion is on his neighbor’s property.

John Knight, abutter, stated he is closest to the Mazzone property and the shed is in a good place causing no harm; it helps keep his neighbor’s property neat and clean.

Gentile asked if the shed was on a concrete pad or blocks. Mazzone responded on blocks with the ability and intentions of moving it. Gentile can see a spot in the middle of the lot that would not violate any setbacks. Mazzone feels that would be an unreasonable place because of the addition he intends to build.

Gentile read the criteria for an Equitable Waiver of Dimensional Requirements. Bartlett noted that the home was built in 1984 with zoning coming into play in 1987.

Motion by Bartlett, seconded by McAllister to close the public hearing for Case #22-04. The motion passed **unanimously**.

Findings of Fact:

1. This is the only location that is reasonable because

- a. Putting it in the building envelope would block the planned expansion of the home
- b. It would be unsightly to put the shed in the middle of the property
2. Both abutters agree the location in the corner is the best and offers the least visual obstruction on the property
3. The trees provide a natural screen for all the neighbors and traffic.
4. The shed is slightly encroaching the property to the south.
5. Shed is on blocks and can be moved so that it is completely within the property line
6. but not more than 3.5 feet before it encroaches the septic tank

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):
 - The location provides no threat to safety
 - A shed, vs no shed, increases orderliness on the property
 - Sheds are common in the neighborhood and therefore it does not change the character of the neighborhood
 - The property is slightly hilly making the back corner a natural place for the shed
 - The property is too small to place the shed at the required setback of 25 feet without causing other problems
3. Substantial justice is done because
 - The owner is provided needed storage in a location that is convenient, yet well screened from sight,
 - Putting the shed in the building zone would make it the prominent feature of the property visually which would be aesthetically unpleasing to the neighbors as well as the owner
 - It allows the owner to use the building zone for home a planned home expansion
4. The values of surrounding properties are not diminished because
 - Orderliness increases property values and the shed is consistent with property characteristics of the neighborhood
5. Literal enforcement would result in unnecessary hardship because
 - It would block the planned expansion of the main house
 - It would place the shed in the most prominent position on the property rather than being out of the way storage.

Equitable waiver for the house being 22.5 feet from the property line instead of 25 in violation of 5.9A

Findings of Fact:

1. The violation was discovered by Ron Briggs while surveying the property in 2022.
2. The home has had 3 owners without knowing this, for a period in excess of 10 years, so only conditions 3 and 4 would apply.
3. The home was built in 1984, before the current zoning ordinance took effect. Technically the setback requirement does not apply according to paragraph 1.3A
4. Putting the waiver on the record changes the status of the home from being an existing, non-conforming structure to a conforming structure; RSA 674:33 a IV.

Conditions for an Equitable Waiver of Dimensional Requirements:

1. Not applicable (more than 10 years have passed)
2. Not applicable (more than 10 years have passed)

3. The encroachment on the 25-foot setback requirement of approximately 2.5 feet poses no threat to public health or safety since this has been the case since 1984 without being noticed.
4. There would be a very high cost associated with correcting the error which would require major construction with no perceivable benefit to the public.

The request for variances for a shed has been **GRANTED** by a 4-0-1 roll call vote with, McAllister abstaining as he was not able to view the property, with the following condition:

- The shed shall be moved off the property line but not so far as to impose on the septic system.

Substantial justice is served in the granting of this variance because putting the shed in the building zone would make it the prominent feature of the property visually which would be aesthetically unpleasing to the neighbors as well as the owner.

The request for an equitable waiver of dimensional requirements has been **GRANTED** by a 5-0 vote of the Zoning Board of Adjustment.

Gentile read the provisions of the 30-day appeal period. Gentile closed Case #22-04.

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Shackford read aloud **Case #22-05** - Variance is requested by J. Stanley Lewis Jr. & Michelle D. Lewis for property located at 21 Diessbach Drive, Map 108, Lot 30, the proposed shed is being located less than 75 feet from the mean high-water mark of Pea Porridge Pond and less than 20 feet from the north boundary line in violation of Article V, Sections 5.9C and F of the Madison Zoning Ordinance.

Conflict of Interest: All members stated they has no conflict of interest in this case via roll call.

Waiver Request: Lewis stated that it is estimated to be 6-9 months before a surveyor can be obtained. Lewis asked for a waiver of the requirement for a certified plot plan. The applicant based measurements off pins put in place by Briggs Land Survey.

Motion by Bartlett, seconded by Martin to accept the request for waiver of a certified plot plan due to the excessive amount of time to wait and not necessary to the decision-making process.

Gentile read aloud a letter from the Eidelweiss Commissioners dated July 11, 2022 that objected to the variance based upon no certified plot plan. Bartlett asked Lewis when the stakes were installed to which Lewis responded June 9, 2022. Lewis stated he has an approved PBN from NH DES.

The motion to waive the requirement for a certified plot plan passed 5-0.

Regional Impact: All members stated they see no regional impact in this case via roll call.

Swearing In: Gentile sworn in all present that were to speak to this case.

Lewis explained that the shed would be for storage of water toys close to the water. There is no home to the left of the property so the shed will not be obstructing any views. The backside of the house where storage is now is low for the tall members of his family; and the shed will not affect trees or vegetation.

There were no comments from the public.

Findings of Fact:

1. The shed is necessary and convenient for the storage of water sport equipment.
2. The low clearance under the deck makes the currently available storage difficult to access, especially for tall people
3. The site is an existing sandbox so there is no impact on vegetation or trees made by the shed
4. There is a DES shoreland permit in hand for the shed installation
5. The location is optimal because
 - a. There is no house on the north side, and not likely to ever be one because of the marshy ground
 - b. There is a natural screen of trees and vegetation blocking a view of the shed from the lake
 - c. The shed will obstruct no one's view of the water
6. This is the only reasonable location for the shed on the property without removing existing trees.
7. The Eidelweiss community board of directors objected to the application being submitted without a certified plot plan.
8. The owner applied for a waiver of the requirement for a certified plot plan on the basis of the long wait (more than 6 months) for surveying services.

Motion by Rau, seconded by McAllister to close the public hearing for Case #22-05. 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 it will have no impact on the character of the neighborhood where small sheds are a popular means of storing outdoor equipment
 - There is no evidence of any health or safety issues and a DES shoreland permit is in hand.
3. Substantial justice is done because
 - The shed increases orderliness on the property
 - It alleviates the inconvenience of the low deck clearance for access to other storage under the house and thus provides more convenient storage by a more usable location
 - It enhances the value of the property and thus supports neighborhood property values
4. The values of surrounding properties are not diminished because
 - Sheds are popular ways to provide storage in the neighborhood
 - This shed is not visible to neighbors nor from the lake and does not block views to the water
 - In general, adequate storage increases property value by providing for orderliness
5. Literal enforcement would result in unnecessary hardship because
 - The property affords very little space for such storage since it is small with many trees. Thus, there is no reasonable location for a shed that meets all the dimensional requirements of the ordinance
 - Outdoor storage on the lake side of the house for water sport equipment is a very reasonable because other locations are on the road side of the house, which would be both very inconvenient to the owner and unnecessarily visible to the neighbors and passing traffic.

Conditions were discussed with Bartlett suggesting natural plant screening and painting the shed the same color as the house. It was decided that no conditions would be imposed.

Motion by Rau, seconded by Bartlett to grant the variance to place a shed less than 75' from the mean high-water mark. Substantial justice is served in the granting of this variance because the shed increases

orderliness on the property and enhances the value of the property and thus supports neighborhood property values. The motion passed **unanimously**.

Gentile read the provisions of the 30-day appeal period. Gentile closed Case #22-05.

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Shackford read aloud **Case #22-06** – Variance is requested by Horizons Engineering, agent for William & Lynne Oxford, for property located at Grachen Drive, Map 113, Lot 55 & 56, to ask for a variance from Article V Section 5.6 of the zoning ordinance to permit the minimum lot size to be less than 2 acres.

Conflict of Interest: All members stated they has no conflict of interest in this case via roll call.

Waiver Request: There were none.

Regional Impact: All members stated they see no regional impact in this case via roll call.

Swearing In: Gentile sworn in all present that were to speak to this case.

Wesley Smith of Horizons Engineering, agent, explained that there were originally three lots that have had two merged as a condition of an auction and acquisition of tax deeded property which now makes up two adjacent lots. The proposal is to reduce the larger lot’s acreage to get adequate building area on the smaller lot; 1.1 acres to 0.73 acres.

Gentile clarified that the applicant is asking for a variance before apply to the Planning Board for a boundary line adjustment with Ohlson stating that the Planning Board would deny this application as presented.

Bartlett stated that merging the lots would be more in the spirit of the ordinance and bring it closer to the 2-acre minimum. Smith noted that that could only be an option because the owner of both lots is the same to which Bartlett argued if both lots were not the same owner then they could not come closer to conforming, but an effort should be made.

Gentile read from Section 1.3A of the Zoning Ordinance which addresses undeveloped non-conforming lots with one provision of the ordinance stating that a non-conforming lot cannot be made more non-conforming. Gentile sees this a if we allow this if it meets the criteria, it will still make one lot more non-conforming. Gentile suggested asking for legal counsel on this.

Shackford, as a resident, questioned where the applicant has proven a hardship. There is room for a structure, maybe not two, with the present configuration; they can be merged. Smith argued that the ownership of the property is immaterial and it is illegal to suggest such an option.

Smith considered withdrawing the application without prejudice but if the Board will be seeking legal counsel, then he would ask that the application be continued while the Board and Smith get advice.

Kimberly Cromie was present for the application discussion but made no comments.

Motion by McAllister, seconded by Rau to close the public hearing for Case #22-06. The motion passed **unanimously**.

Motion by McAllister, seconded by Bartlett to continue Case #22-06 to the August 17th meeting at Town Hall. The motion passed **unanimously**.

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ADMINISTRATION: A copy of an email from the Selectmen’s counsel was reviewed to share recent RSA amendments. The Board already clearly states Findings of Facts for each application and is now aware of the 90-day decision deadline.

MINUTES: Motion by Rau, seconded by McAllister to approve the minutes of the May 18, 2022 minutes as written. The motion passed **unanimously**.

Motion by McAllister, seconded by Rau to approve the minutes of the June 16, 2022 minutes with the addition of the word “informal” placed before the word representative in paragraph six. The motion passed **4-0-1** with Bartlett abstaining because she was not present on June 16, 2022.

ADJOURNMENT: Motion by Bartlett, seconded by Rau to adjourn the meeting. The motion passed **unanimously**. The meeting adjourned at 8:58 pm.

Respectfully Submitted,

Linda Shackford
Town Administrator