



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
PO BOX 248
MADISON, NEW HAMPSHIRE 03849
planning@madison-nh.org**

Phone: 603-367-4332 x303 Fax: 603-367-4547

**ZBA MINUTES
August 17, 2022**

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

EXCUSED: Alternate Mark Totman

OTHERS PRESENT: Town Administrator Linda Shackford; MadTV Carol Dandeneau; Shawn Bergeron; Ken Hughes; 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.

The applicant nor the applicant's agent was present. The Chairman moved **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 to later in the meeting.

Shackford read aloud **Case #22-07** - Variance is requested by Bergeron Technical Services LLC, agent for Margaret Foerster Ettinger 2012 Irrevocable Route 41 NH Trust, for property located at Plains Road, Map 119, Lot 13, to ask for a variance from Article V Section 5.9A and 5.9C of the zoning ordinance to permit a single-family home to be constructed within 75 feet of both the road centerline of Route 41, Plains Road, and within 75 feet of the mean high-water mark of Silver Lake. A stairway accessing the waterfront to be constructed within 75 feet of the mean high-water mark of Silver Lake.

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 swore in all present that were to speak to this case.

Bergeron presented to the Board the statistic of the lot that was created in 1964. The make up does not allow for any buildable area per current regulations as the lot is only 88.94' deep. There is only one location allowed to construct a driveway that DOT will approve. DES has approved access to the lake via a simple stairway that will not impact the banking as it will be constructed on posts bored into the ground.

Bartlett asked if the proposed use is to be a full-time home. Bergeron replied it will be a personal home but may be seasonal.

Gentile read from the Zoning Ordinance Section 1.3A that provides for building on lots like this one presented.

Robert Spring of 323 Plains Road expressed his concern about erosion. Bergeron explained that the stairway to the water will be constructed in such a way that will allow the vegetation to grow and prevent erosion. Spring commented that if overhangs are included in the footprint then the actual dimension of the home may be closer to 27'x40' versus 20'x40'.

Ken Hughes of 309 Plains Road asked what kind of home is proposed. Bergeron responded that according to the building permit it is to be a two-story cape, 20'x40' with a 6'x36' deck.

Gentile asked if the height will meet the zoning requirements to which Bergeron responded that the home with asphalt roofing, typical gable construction and wood siding will not exceed the allowed height.

Bartlett asked which direction the gable will fall to which Bergeron responded that the roofline will be parallel with the road.

Hughes confirmed that the overhangs are required to be calculated in the footprint. Gentile read the ordinance and concurred it does include overhangs.

Notes on Finding of Fact:

1. Paragraph 1.3 A provides the foundational right for the owner to build on this non-conforming lot which was subdivided prior to March 1987, the date of the ordinance.
2. The NH DOT driveway permit provides a 20' x 40' area sufficient for 3 to 4 automobiles plus the easement from Route 41. This is sufficient on-site parking for a two-bedroom house.
3. There is no buildable envelope on this lot under the existing ordinance since the 75-foot setback from the center of Route 41 overlaps the 75-foot setback from the lakeshore.
4. The DES permit for the septic system and comprehensive shoreland protection certificate have been applied for.
5. The stairs to the lakeshore down the embankment will be built above ground on poured columns to allow vegetation to continue to stabilize the bank.
6. The location of the stairway and its construction were chosen to minimize the impact on existing trees and vegetation.

Motion by McAllister, seconded by Rau to close the public hearing for Case #22-07. 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):
 - The size of the home and the lake access are consistent with other properties on the lakeshore and would not alter the character of the neighborhood.
 - The design the of driveway and parking, and stairs for lake access minimize impact on the environment.

- Public safety standards will be met with the granting of the DES permits and the existing DOT driveway permit.
3. Substantial justice is done because
 - The variance provides the property owner with the opportunity to build as provided for in paragraph 1.3 A of the zoning ordinance.
 - This lot could otherwise not be developed.
 4. The values of surrounding properties are not diminished because
 - The size of the house is appropriate for the location and sufficient parking for this house is provided, making the house consistent with other structures in the neighborhood.
 5. Literal enforcement would result in unnecessary hardship because
 - It would deny the owner reasonable use of the property zoned for a residence
 - There is no demonstrable benefit to the public in denying the variance for a reasonable house with a safe driveway access to Route 41.

Motion by McAllister, seconded by Bartlett to approve the request for a variance to allow construction of a home within 75’ of the mean high-water mark of Silver Lake, within 75’ of the road centerline of Plains Road and a stairway accessing the waterfront to be constructed within 75’ of the mean high-water mark of Silver Lake with the condition that NH DES septic system approval and NH DES comprehensive shoreland protection certificate are successfully obtained. Substantial justice is served in the granting of this variance because Section 1.3A of the Madison Zoning Ordinance provides the property owner the opportunity to build on a lot that otherwise could not be developed. The motion passed **5-0**.

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

.....

Shackford read aloud **Case #22-06** – Continued case for a 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.

Gentile summarized that this application, continued from the July meeting, was a request by a single owner of two abutting lots to move the lot line. If this variance is granted this is no guarantee that a future variance may be granted.

Wes Smith, agent for the applicant, explained that the two lots have a total area of about 1.5 acres. The proposal is to more evenly distribute the acreage to make two reasonable building sites. The brook location limits the location of the septic as it is now configured.

Notes on Finding of Fact:

1. The application affects two previously existing, non-conforming, adjacent lots with one owner.
2. The ZBA takes no position on past or future deed restrictions.

3. The outside perimeter of the combined lots remains identical with the original subdivision of these lots which pre-dates the zoning ordinance. Paragraph 1.3 A of the zoning ordinance provides the right of the owner to develop these lots, so long as adequate parking is provided on site.
4. The request is to make a more even distribution of the two lots to minimize the pressure on setbacks in lot 55, the smaller lot, due in part to its smaller size, in part to a larger percentage of wetlands.
5. This triggers the need for a variance because paragraph 1.3 A does not allow a lot, in this case lot 56, to be made less conforming.
6. The two lots were originally three lots, two of which were already combined to make lot 56, the larger of the now existing two lots. Both of the proposed lots would be bigger, i.e. more conforming, than any of the original three lots.
7. There is no increase in building density resulting from the requested variance. In fact, seen from the perspective of the history of the original subdivision, there is a decrease in building density from three to two lots.
8. The requested configuration provides more favorable conditions for developing lot 55 which is more impacted by a stream and wetlands without significantly impacting the conditions of lot 56.
9. The granting of this variance does not determine the position of the lot line but allows lot 56 to be made more non-conforming than it currently is (but also more conforming than its pre-1987 subdivision).
10. The granting of this variance is not a guarantee that variances will be granted in the future for specific structures or septic systems not yet proposed which may need relief from setback requirements.

Motion by Martin, seconded by McAllister to close the public hearing. The motion passed **5-0**.

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):
 - There is no change to the character of the neighborhood in that there is no increase in building density.
 - The proposed change provides for an improved environmental impact.
- 3 Substantial justice is done because
 - The proposal allows for a more equitable distribution of buildable land on the two lots which provides the owner better and more reasonable use of his land.
- 4 The values of surrounding properties are not diminished because
 - The proposal will allow for a nicer home on lot 55 which will enhance property values rather than diminish them.
- 5 Literal enforcement would result in unnecessary hardship because
 - There is no benefit to the public or the neighborhood in requiring lot 55 to have a much smaller home due to the unique characteristics of the wetlands on that lot. The adjustment will enhance the usability of the lot and the property value.
 - The adjustment provides for a reasonable use of the property by granting relief from the restrictions of the encroaching wetlands.

Motion by McAllister, seconded by Bartlett to grant the request for a variance to allow land from one non-conforming lot to be added to an adjacent non-conforming lot. Substantial justice is served in the

granting of this variance because the proposal allows for a more equitable distribution of buildable land on the two lots which provides the owner better and more reasonable use of his land. The motion passed **5-0**.

Gentile read the provisions of the 30-day appeal period. Gentile closed Case #22-06.

.....

Shackford read aloud **Case #22-08** - Variance is requested by Bergeron Technical Services LLC, agent for Kathryn Leech, for property located at 601 East Shore Drive, Map 132, Lot 1, to ask for a variance from Article I Section 1.3B of the zoning ordinance to permit an increase in height of a non-conforming structure. Proposed height above sea level would increase 9 feet, 6 ¾ inches. The proposed new home will be taller above sea level than the highest roofline of the existing home within 75-foot setback. The deck and part of the new home will be constructed within the demolished existing home’s footprint within one year, and the new home’s size including the covered entry does not exceed 50% of the existing non-conforming home and cabin’s non-complaint square footage combined.

The applicant’s agent has requested to withdraw this application on behalf of their client without prejudice.

Motion by Martin, seconded by McAllister to grant the withdrawal of this application without prejudice. The motion passed **5-0**.

.....

MINUTES: Motion by Rau, seconded by McAllister to approve the minutes of the July 20, 2022 minutes with the change to paragraph nine. The word built on line five shall be changed to moved. The motion passed **unanimously**.

ADMINISTRATION: Gentile will not be in attendance at the December meeting and hopes to start next month trading off the facilitating of cases so more members will be comfortable with chairing the hearings.

ADJOURNMENT: Motion by Rau seconded by Martin to adjourn the meeting. The motion passed **unanimously**. The meeting adjourned at 7:25 pm.

Respectfully Submitted,

Linda Shackford
Town Administrator